

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**JOHN DOE, et al.,**

**Case No. 02:08 CV 575**

**Plaintiffs,**

**JUDGE GREGORY L. FROST**

**v.**

**Magistrate Judge NORAH MCCANN KING**

**MOUNT VERNON CITY SCHOOL  
DISTRICT BOARD OF EDUCATION,  
et al.,**

**Defendants.**

**MOTION FOR CONTINUANCE OF TRIAL DATE**

On behalf of Defendant John Freshwater, the undersigned counsel for the dismissed claims of the Counterclaimant/Defendant John Freshwater motions this Court for a continuance of the trial date for the reasons set forth in the attached memorandum.

Respectfully submitted,

s/ R. Kelly Hamilton

The Law Office of R. Kelly Hamilton (0066403)

**Office:** 4030 Broadway, Grove City, Ohio 43123

**Mail to:** P.O. Box 824, Grove City, Ohio 43123

Phone 614-875-4174 Fax 614-875-4188

Email: [hamiltonlaw@sbcglobal.net](mailto:hamiltonlaw@sbcglobal.net)

Attorney for Counterclaimant/Defendant John Freshwater

**MEMORANDUM IN SUPPORT**

The undersigned counsel, who is no longer trial counsel, as the claims represented by the undersigned were dismissed by this Court's Order, (*See Order, Doc. 80 and Doc. 83<sup>1</sup>*) makes this motion on behalf of Defendant Freshwater as requested by the insurance claim analyst, Nancy Moore (*Exhibit 1*).

This Court granted the motion of Attorneys Robert Stoffers and Jason Deschler to withdraw from representation of Defendant Freshwater. *See Order, Doc. 90*. In their motion to withdraw from representation of Defendant Freshwater, Attorneys Stoffers and Deschler errantly purported that Defendant Freshwater continued to be represented in this matter by the undersigned. The undersigned has not at any time represented Defendant Freshwater in his professional capacity during this case in this matter as Attorneys Stoffers and Deschler were retained by Defendant Freshwater's employer's insurance company: Ohio Casualty Insurance. Attorneys Stoffers and Deschler have at all times during the pendency of this case represented Defendant Freshwater in his professional capacity.

At all times in this matter the undersigned has only represented Counterclaimant/ Defendant John Freshwater in his personal capacity as it relates to the counterclaims of Freshwater. (*See Doc. 19, Counterclaim of Freshwater "personal capacity"*) Freshwater's counterclaims were subsequently dismissed by this Court effectively terminating any trial attorney role or status of the undersigned. The undersigned continues to serve as Freshwater's personal attorney in various matters but does not represent Defendant Freshwater in this matter.

Regrettably, Defendant Freshwater and Attorneys Stoffers and Deschler encountered a rift which resulted in Defendant Freshwater tendering notice of disapproval upon Attorneys

---

<sup>1</sup> Defendant Freshwater's counterclaims for defamation and intentional infliction of emotional distress are no longer pending.

Stoffers and Deschler on April 23, 2010, subsequent to Defendant Freshwater perceiving his then counsel had been less than forthright and truthful with him. (*Exhibit 2*). As a result of Defendant Freshwater's notice to Attorneys Stoffers and Deschler, Ohio Casualty Insurance Claim Analyst, Nancy Moore responded to Defendant Freshwater on April 26, 2010, indicating new counsel would be considered after Claim Analyst Moore's consultation with her supervisors. (*Exhibit 3*) Today – May 3, 2010 - Defendant Freshwater learned from Claim Analyst Moore that new counsel could be appointed but only if the trial date in this matter were rescheduled. (*Exhibit 1*) Thus, the motion herein is made.

The undersigned cannot now represent Defendant Freshwater's professional capacity defense in this matter due to strategic decisions or inactions taken by Defendant Freshwater's former counsel that were and are in direct contrast to the position asserted by the undersigned in Freshwater's other legal matters. Additionally, if the undersigned were to serve as Defendant Freshwater's counsel in this matter there is a legitimate prospect any recovery obtained or sought by Plaintiffs would be denied as a matter of coverage by Ohio Casualty Insurance.

The above assertions are further supported by affidavit of Defendant Freshwater. (*Exhibit 4*)

WHEREFORE, the undersigned counsel for former Counterclaimant/Defendant John Freshwater respectfully requests this Court permit Defendant Freshwater to obtain the appointment of new counsel as asserted is possible by Claim Analyst Moore.

Respectfully submitted,

s/ R. Kelly Hamilton

The Law Office of R. Kelly Hamilton (0066403)

**Office:** 4030 Broadway, Grove City, Ohio 43123

**Mail to:** P.O. Box 824, Grove City, Ohio 43123

Phone 614-875-4174 Fax 614-875-4188

Email: [hamiltonlaw@sbcglobal.net](mailto:hamiltonlaw@sbcglobal.net)

Attorney for Counterclaimant/Defendant John Freshwater

**CERTIFICATE OF SERVICE**

I hereby certify that on May 3, 2010, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all registered parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/ R. Kelly Hamilton  
The Law Office of R. Kelly Hamilton (0066403)