

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

Brian P. Carr
Plaintiff

versus

Sam Reed, et al
Defendants

Civil No. 3:07-cv-05260-RJB

Plaintiff's Surreply to Reply Memorandum in Support of Defendant Wanda Briggs' Motion for Summary Judgment and Motion to Strike dated October 18, 2007

Plaintiff, Brian P. Carr, pro se, hereby requests in compliance with [Local Rule CR 7](#) (g) that the court strike portions of the Reply Memorandum in Support of Defendant Wanda Briggs' Motion for Summary Judgment and Motion to Strike dated October 18, 2007, [document 58](#).

Plaintiff's Reply Brief Fully Responsive

On September 24, 2007, plaintiff demonstrated that his prior divorce was extremely peripheral to the case at hand [[CR](#)¹ pg1, [D2](#)² ¶1], but on September 27, 2007 defendant Briggs provided a purported '*Statement of Facts*' with '*Plaintiff Carr was involved in **divorce proceedings** in the Washington courts.... alleging that the inaction by the CJC facilitated the commission of due process violations by the state judges involved with his **divorce proceedings***.' [[M3](#)³ pg3¶A, bold added by plaintiff] which is blatantly false. The actions of Judge Borst of Lincoln County Superior Court (a completely different court) who handled the divorce in its entirety [[D2](#) ¶1] were never mentioned to the CJC [[D3](#)⁴ ¶1-4] or in the Complaint in this matter [[AC](#)⁵]. These facts were well established before defendant Briggs' Motion, yet the defendant persisted in misrepresenting this action. The plaintiff called attention to this misrepresentation and responded with an accurate statement of the issues before the court and did not raise any new issues, cases, or arguments [[R3](#)⁶ pg1-4]. While it is understandable that the defendant does not like having those false statements to the court refuted, that is not grounds to have the corrections

1 CR refers to plaintiff's Combined Reply Brief submitted on September 24, 2007, [document 37](#).

2 D2 refers to the Declaration of the plaintiff of September 24, 2007, [document 36](#).

3 M3 refers to defendant Briggs Motion for Summary Judgment and Dismissal of Sept 27, 2007, [document 41](#).

4 D3 refers to the [Declaration of the plaintiff of October 15, 2007](#).

5 AC refers to the Amended Complaint of August 15, 2007, [document 21](#). For paragraphs below 89 and reliefs below 20, it also refers to the Complaint of May 23, 2007, [document 1](#).

6 R3 refers to plaintiff's Reply Brief submitted on October 15, 2007, [document 57](#).

stricken.

The false and misleading '*Statement of Facts*' was relatively brief [M3 pg3¶A] while the corrections were much more extensive [R3 pg1-4], but there were important and relevant facts that needed to be covered. In particular, it was necessary to clearly establish that the defendants who were actually referred to the CJC had, in fact, violated the state constitution (numeric limit on the number of Superior Court Commissioners), state statutes, the U.S. constitution (due process), and their oath of office [R3 pg1-4], which is a critical element of why action by the CJC was and is required. Just because these facts are inconvenient for the defendant is not a justification for having them stricken. Indeed the arguments against those pages are unfounded and should themselves be stricken.

New Argument of Limited Discretion

Defendant Briggs' motion states '*The Commission and staff [CJC] have unlimited discretion to pursue or dismiss citizen complaints against judges.*' [M3 pg11 ln9], but when the plaintiff notes that this contradicts the state constitution which requires a full investigation and publication of the results as long as there is probable cause of a violation [R3 pg5,8-9], the defendant attempts to introduce a new argument with '*the CJC investigates each complaint, but has discretion to decide whether to charge a canon violation based upon the investigation.*' [O3⁷ pg3] This new argument might be relevant and the plaintiff would be happy to respond to it except that it was raised in a reply brief where the plaintiff is not permitted demonstrate how the state and U.S. constitution require the relief sought [AC rlf19]. Since the plaintiff can not address this new argument, the plaintiff asks that declaration of Callner ([document 59](#)) and the argument [O3 pg3ln13-pg4ln2] be stricken.

Misstatement of Basis for Relief

The defendant incorrectly cites *Pearson v. Brace*, 2007 WL 2972744 and claims that the dropping of the claim under 42 U.S.C. § 1986 is an '*eleventh-hour plea for leave to amend and switch legal theories*' when in fact 42 U.S.C. § 1986 was never a substantial basis for the relief sought. The plaintiff never sought CJC action to reverse previous state decisions, but rather to

⁷ O3 refers to defendant Briggs' Reply Brief of October 18, 2007, [document 58](#).

correct continued refusals of the Clark County Superior Court to actually hear [RCW 26.50](#) (domestic violence) rather than directing the Clark County District Court process the requests without jurisdiction. [[AC ¶90-96,rlf19](#)] Not only is this a clear violation of the code of conduct (along with the oath of office), but by not addressing and correcting this continuing problem, the CJC subjected all the residents of Clark County to a judiciary which does not respect the rule of law or, more importantly, provide a due process forum for these important issues of life, liberty, and property. [[AC ¶90-96,rlf19](#)] It was the [Fourteenth Amendment](#) under which the Amended Complaint based the relief sought and the withdrawal of the reference to 42 U.S.C. § 1986 does not in any way detract from the strength of the suit against the defendant. [[AC ¶90-96,rlf19](#)] As the defendant's claim of lack of basis for the relief sought does not address the actual Amended Complaint but some imagined unstated basis under 42 U.S.C. § 1986, it too should stricken.

Conclusion

For the reasons set forth above, Plaintiff respectfully requests that the court strike portions of the Reply Memorandum in Support of Defendant Wanda Briggs' Motion for Summary Judgment and Motion to Strike dated October 18, 2007.

Respectfully submitted, October 22, 2007 (Vancouver, WA).

s/ Brian P Carr
Signature of Plaintiff
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CERTIFICATION

I hereby certify that on October 22, 2007, a true and accurate copy of the foregoing plaintiff's Surreply to Reply Memorandum in Support of Defendant Wanda Briggs' Motion for Summary Judgment and Motion to Strike was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system as all parties have elected electronic filing as indicated on the Notice of electronic Filing. Parties access this filing through the court's CM/ECF System.

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