

THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

JACK BEAM and RENEE BEAM,

Plaintiffs,

v.

MATTHEW S. PETERSEN, FEDERAL  
ELECTION COMMISSION CHAIRMAN,

Defendant.

Civil No. 07cv1227

Judge Rebecca R. Pallmeyer

Magistrate Judge Cole

DEFENDANT'S MEMORANDUM  
IN SUPPORT OF ITS MOTION TO  
COMPEL COMPLIANCE WITH  
LOCAL RULE 83.12(b)

**DEFENDANT'S MEMORANDUM IN SUPPORT OF ITS MOTION  
TO COMPEL COMPLIANCE WITH LOCAL RULE 83.12(b)**

Defendant Federal Election Commission ("FEC" or "Commission") respectfully moves this Court for an order compelling plaintiffs Jack and Renee Beam to retain counsel admitted to the trial bar of this Court. Attorneys who are members of the general bar "may appear during testimonial proceedings *only* if accompanied by a member of the trial bar who is serving as advisor." Local Rule 83.12(b) (N.D. Ill.) (emphasis added). Plaintiffs' counsel Michael Dezsi and plaintiff Jack Beam are general bar members, but neither has been admitted to the trial bar, and no attorney admitted to the trial bar has to date filed an appearance on behalf of plaintiffs — even though FEC counsel raised this omission at the April 6, 2010, status hearing and plaintiffs' counsel stated then that he would find qualified counsel, without disputing that the trial bar requirement applied to plaintiffs. Therefore, the FEC requests that this Court compel plaintiffs to retain a member of the trial bar and notice that person's appearance before the trial of this matter.

## ARGUMENT

### I. IN ORDER FOR GENERAL BAR MEMBERS TO APPEAR IN TESTIMONIAL PROCEEDINGS LIKE THE UPCOMING TRIAL, A MEMBER OF THE TRIAL BAR MUST BE PRESENT

Under this Court's Local Rules, members of the general bar may enter appearances, file pleadings, motions or other documents and sign stipulations, but they "may appear during testimonial proceedings *only* if accompanied by a member of the trial bar who is serving as advisor." LR83.12(b) (emphasis added). In order to ensure that counsel have the experience necessary for the conduct of testimonial proceedings, admission to the trial bar requires experience in such proceedings beyond that required for the general bar. *See* LR83.11(b).

The trial in this case qualifies as a testimonial proceeding within the meaning of LR83.12(b) and therefore requires an appearance by an attorney admitted to the trial bar. Under this rule, testimonial proceedings are "evidentiary proceedings in which all testimony is given under oath and a record is made of the testimony," LR83.11(a)(1)(A), "witnesses are subject to cross-examination," LR83.11(a)(1)(B), "a presiding officer is present," LR83.11(a)(1)(C), and "parties to such proceedings are generally represented by attorneys." LR83.11(a)(1)(D). This trial will follow the Federal Rules of Evidence and witnesses' testimony will be given under oath. *See* Final Pretrial Order ¶ (2). All witnesses will be available for cross examination. *See id.* ¶ (2)(d). Plainly, the trial of this matter will be a testimonial proceeding under LR83.12(b).

**II. ALTHOUGH TRIAL IS APPROACHING, NO COUNSEL ADMITTED TO THE TRIAL BAR HAS FILED AN APPEARANCE ON BEHALF OF PLAINTIFFS IN THIS CASE**

Each attorney “who represents a party in any proceeding brought in this Court” must file an appearance form. LR83.16(b). Furthermore, “[o]nce an attorney has filed an appearance form pursuant to LR83.16, that attorney is the attorney of record” and “may not withdraw, nor may any other attorney file an appearance on behalf of the same party...without first obtaining leave of the court.” LR83.17.

In this matter, attorney Michael R. Dezsi has filed appearances on behalf of plaintiffs Jack and Renee Beam. Mr. Dezsi was admitted to the general bar on February 16, 2007. *See* Northern District of Illinois Active General and Trial Bar Members, available at <http://www.ilnd.uscourts.gov/home/datalookup/attrec/index.cfm> (visited Aug. 9, 2010). Plaintiff Jack Beam was admitted to the general bar on March 16, 2007, *see id.*, and designated as local counsel on April 6, 2007, *see* Docket #18. Neither attorney, however, is listed as a member of the trial bar, nor have plaintiffs obtained leave of the Court for another attorney to appear in this proceeding. *See* LR83.17(b). Since Mr. Dezsi is not accompanied by a member of the trial bar as required for testimonial proceedings, Mr. Dezsi may not appear as counsel for plaintiffs at trial. *See* LR83.16(b).

Mr. Beam’s designation as local counsel does not alleviate the need for an attorney admitted to the trial bar. Designation of local counsel allows “[a]n attorney not having an office within this District” to “appear before this Court.” LR83.15(a). Such designation permits nonresident counsel, such as Mr. Dezsi, to handle matters consistent with LR83.12 and 83.14. But the requirements of LR83.12(b) remain, and LR83.15 does not permit local counsel to usher into court nonresident counsel who is also not a member

of the trial bar. To read LR83.15 as permitting such appearances would in effect subject resident counsel to more stringent requirements than nonresident counsel, an intent manifested nowhere in LR83.15. Thus, plaintiffs must still obtain counsel admitted to the trial bar if Mr. Dezsi is to appear at the pending testimonial proceedings.

**III. NO EXCEPTIONAL CIRCUMSTANCES WARRANT A WAIVER OF THE TRIAL BAR REQUIREMENT FOR PLAINTIFFS**

Only in “exceptional circumstances” and “upon written request by the client and a showing that the interests of justice are best served by waiving the experience requirements otherwise required by these rules” may a judge grant permission to an attorney admitted to the general bar but not to the trial bar to appear in a proceeding. LR83.12(d). No such request has been made here, but even if one had been, the circumstances of this case are hardly “exceptional.” This litigation has been ongoing for more than three years. Plaintiffs appear able to obtain qualified counsel, and Mr. Beam is himself a lawyer admitted to the general bar in this jurisdiction. Plaintiffs selected this venue and its rules. Counsel has had ample opportunity to notice an appearance by a member of the trial bar or to apply for admission to the trial bar himself, yet he has failed to do so. Moreover, at the April 6, 2010 status hearing in this matter, *see* Docket #176 (Minute entry for hearing), counsel for the FEC informed the Court of this omission. Plaintiffs’ counsel did not deny that the trial bar requirement applied, and he pledged to find qualified counsel, but to date he has failed to do so. Plaintiffs should meet the basic requirements that litigants follow in this Court.

**CONCLUSION**

For the foregoing reasons, the Commission respectfully requests that the Court require plaintiffs to retain a member of the trial bar of this Court and notice that person's appearance before the trial of this matter.

Respectfully submitted,

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/s/ Benjamin A. Streeter III  
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August 13, 2010

FOR THE DEFENDANT  
FEDERAL ELECTION COMMISSION  
AND ITS CHAIRMAN

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