

Karra J. Porter, 5223
Scott T. Evans, 6218
CHRISTENSEN & JENSEN, P.C.
257 East 200 South, Suite 1100
Salt Lake City, Utah 84111
Telephone: (801) 323-5000
Karra.Porter@chrisjen.com
Scott.Evans@chrisjen.com
Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

<p>FEDERAL ELECTION COMMISSION, Plaintiff, v. JEREMY JOHNSON, Defendant.</p>	<p>DEFENDANT’S MOTION TO DISMISS PLAINTIFF’S COMPLAINT (AS IMPROPERLY FILED BY AN ATTORNEY NOT LICENSED OR ADMITTED IN UTAH)</p> <p>Civil No. 2:15CV00439 TC</p> <p>District Judge Dee Benson</p>
--	--

By and through counsel, Defendant Jeremy Johnson hereby submits the following motion in support of its motion to dismiss the Federal Election Commission’s Complaint because it was not filed by an attorney licensed in the state of Utah.

PROCEDURAL BACKGROUND

1. On June 19, 2015, the Federal Election Commission filed a Civil Cover Sheet (Docket No. 1) and Complaint (Docket No. 2).
2. Neither the Complaint nor the Civil Cover Sheet was filed or signed by an attorney admitted to practice before the Court (hereinafter referred to generally as “local counsel”). *See id.*

3. On the same day, the originally assigned Judge (the Hon. Tena Campbell) issued an order of recusal and the case was reassigned to the Hon. Dee Benson. (Docket No. 3)

4. After filing the Complaint, the Federal Election Commission filed a Motion for Waiver of Local Counsel Rules (Docket No. 4). The FEC did not file, and has never filed, a motion for admission *pro hac vice*.

5. Defendant opposed the FEC's motion on August 3, 2015, and granted the FEC an extension of time to file its reply on the FEC's motion to September 8, 2015.

6. No order has been granted authorizing FEC counsel (who are neither licensed nor otherwise admitted in Utah). Nor does the proposed order submitted by the Federal Election Commission seek to grant such authority retroactively. (See Docket No. 4 exh. B.)

7. Until and unless the complaint is filed by a properly licensed or admitted attorney, the Complaint has not been filed.¹

ARGUMENT

THE FEC'S COMPLAINT WAS NOT FILED BY AN ATTORNEY LICENSED OR OTHERWISE ADMITTED IN UTAH. AS SUCH, IT IS NOT PROPERLY FILED, AND IT SHOULD BE DISMISSED.

As reflected on the face of the Complaint and by the court's own docket, the Complaint in this case was filed by an attorney who is neither licensed nor otherwise admitted to practice in Utah. The wording, purpose, and scope of the rules requiring an authorized signator have been set forth in Defendant's Memorandum in Opposition to Plaintiff's Motion for Waiver of Local Counsel Rules (Docket No. 10), a copy of which is attached hereto as Exh. A.

¹ At most, the existing Complaint might "ripen" on the date that an order is signed authorizing the FEC to file pleadings in the case (if the FEC's motion is granted over defendant's objection).

To avoid duplication and because this motion is dependent on resolution of the prior motion, the briefing in Docket No. 10 is incorporated herein (and attached hereto). In short: Until and unless it is filed by an attorney authorized to sign and file pleadings, no Complaint has properly been filed in this case by the Federal Election Commission, and the purported “Complaint” on file as Docket No. 1 should be dismissed.²

CONCLUSION

For the reasons set forth above, Defendant respectfully requests that Plaintiff’s Complaint be dismissed.

DATED this 8th day of September, 2015.

CHRISTENSEN & JENSEN, P.C.

/s/ Karra J. Porter

Karra J. Porter

Scott T. Evans

Attorneys for Defendant

² Ordinarily, defendant would have awaited the outcome of the FEC’s pending motion to waive local counsel requirements before filing a motion to dismiss on this ground. However, despite the pending dispute over whether a complaint has properly been filed at all, the FEC has taken the position that defendant is required to respond regardless of the need for clarification from the court, and that it intends to seek a default judgment. In response, defendant advised the FEC of his intent to proceed with this motion to dismiss.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of September, 2015, I electronically filed with the Clerk of the Court of the foregoing MOTION TO DISMISS by using the Court's CM/ECF system, which sent notification of such filing to the following:

Lisa J. Stevenson
Deputy General Counsel – Law
l Stevenson@fec.gov

Harry J. Summers
Assistant General Counsel
hsummers@fec.gov

Kevin Deeley
Acting Associate General Counsel
kdeeley@fec.gov

Kevin P. Hancock
Attorney
khancock@fec.gov

Attorneys for Plaintiff Federal Election Commission

/s/ Anne L. MacLeod, Secretary _____