

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES CAMP,

Plaintiff,

v.

BETTY B. CASON, in her official capacity
as the Probate Judge for Carroll County,
Georgia, and BILL HITCHENS, in his official
Capacity as the Commissioner of the Georgia
Department of Public Safety,

Defendants.

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* CIVIL ACTION FILE
* NO. 1:06-CV-1586-CAP
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**DEFENDANT WILLIAM HITCHENS' REPLY TO PLAINTIFF'S
RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

COMES NOW Colonel William Hitchens ("Hitchens"), Commissioner of the Department of Public Safety, by counsel, the Attorney General for the State of Georgia, and pursuant to *LR 7.1 C* submits his Reply to Plaintiff's Response to Defendant's Motion for Summary Judgment.

I.

Defendant Hitchens hereby reiterates that statement of the case and statement of facts from his original motion. (R1- 81). Plaintiff filed a response to Defendants motion. (R1-88). Much of the response rehashes arguments previously made at different junctures of the case. Rather than restating

arguments, Defendant replies to simply point out a few prominent inconsistencies, and clarify the record.

II.

Initially, Defendant notes that despite moving for summary judgment on his own behalf, Plaintiff contends that there are issues of material fact in this case. For instance, Plaintiff claims that the Department's new form may not be in use State wide. (R1-88, p. 2). Plaintiff simply misinterprets the applicable statute, and fails to understand the role of the Department in the process. It is undisputed that according to state law, the Department simply formulates and distributes an application form. It is undisputed that in this case, the Department formulated, and distributed forms. (R1-81, Affidavit of Hitchens, ¶ 10, 17, 18; Affidavit of O'Brien ¶ 10, 18). The Department has no other role in the process, including insuring that whatever form the Department provides is actually used by the 159 Probate Courts of the State. Defendant notes that Plaintiff has never cited to any legal authority for the proposition that the Department "supervises", "monitors" or even has authority to "ensure" the use of the application form.¹

Plaintiff also contends that the form was changed at the last minute, to deprive the court of jurisdiction.² (R1-88, p. 4-5). Plaintiff's contention is

¹ To the contrary, it is undisputed that the Department has no such authority. (R1-81, Affidavit of Hitchens, ¶ 19; Affidavit of O'Brien, ¶ 19).

² Defendant Hitchens has not argued that the court lacks jurisdiction.

contrary to undisputed facts of which the Plaintiff was aware. Despite prevailing on the motion to dismiss in district court, it can not be disputed that Defendant undertook to survey probate court judges to determine whether the questioned information was needed, and the basis for the need. (R1-81, Affidavit of Hitchens, ¶ 14, 15; Affidavit of O'Brien, ¶ 14-16). Contrary to Plaintiff's speculation, it is undisputed that the survey was the primary basis for the change in the form. *Id.* Although Plaintiff would have the court believe that it was the decision of the Eleventh Circuit Court of Appeals that prompted the new form, the fact is that the survey was taking place prior to decision of that Court.

Finally, Plaintiff spends a good deal of time claiming that there is no assurance that once litigation is over, the form will not be whimsically changed back. However, Plaintiff overlooks that fact that at the time the Defendant conducted the survey of probate court judges, the Defendant had prevailed on a motion to dismiss. The survey was not conducted to deprive any court of jurisdiction or to prevail in a case, but to ascertain the true need for the questioned information. The logic behind the survey was simple: if the probate courts do not want, or need the questioned information, there is no need to proceed to the issue of the propriety of the questioned information.

Because the change in the application form was made in large part based upon a survey, Plaintiff can not show or even speculate that there will be a reversal

and reinstatement of a request for information which probate judges throughout the State have not indicated that they need, as soon as litigation has ended.

In light of the above, Defendant Hitchens respectfully requests that the Court **Deny** Plaintiff's Motion for Summary Judgment, **Grant** Defendant Hitchens' request for summary judgment, tax all costs to Plaintiff, and order such other and further relief as the Court deems appropriate.

Respectfully Submitted, this 15th day of June, 2007.

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CERTIFICATION AS TO FONT

Pursuant to N.D. Ga. Local Rule 7.1 D, I hereby certify that this document is submitted in Times New Roman 14 point type as required by N.D. Ga. Local Rule 5.1(b).

s/ Eddie Snelling, Jr.
Georgia Bar No. 665725

CERTIFICATE OF SERVICE

I hereby certify that on June 15th, 2007, I electronically filed DEFENDANT HITCHENS' REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANT HITCHENS' MOTION FOR SUMMARY JUDGMENT with the Clerk of Court using the CM/ECF system which will send email notification to the following attorneys of record:

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