

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

JUDICIAL WATCH, INC.,)	
)	
Plaintiff,)	Judge Richard J. Billik, Jr.
)	
vs.)	No. 2007-CH-01306
)	
THE OFFICE OF GOVERNOR ROD)	
R. BLAGOJEVICH,)	
)	
Defendant.)	
<hr style="border: 0.5px solid black;"/>		

**PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTIONS FOR
APPOINTMENT OF SPECIAL COUNSEL AND FOR
LEAVE TO FILE MOTION TO DISMISS**

Plaintiff, JUDICIAL WATCH, INC., by counsel, respectfully submits this opposition to Defendant’s motions for appointment of special counsel and for leave to file a motion to dismiss. As grounds therefor, Plaintiff states as follows:

1. Plaintiff filed this action on January 16, 2007 to compel compliance with the Illinois Freedom of Information Act (“FOIA”), 5 ILCS § 140/1, *et seq.*
2. On February 27, 2007, the Office of the Attorney General filed a timely appearance on behalf of Defendant and requested a twenty-eight (28) day extension of time, until and including March 27, 2008, for Defendant to respond to the Complaint. Plaintiff subsequently agreed to the submission of an agreed order allowing Defendant until and including this same date in which to respond.

3. Despite the Attorney General's apparent willingness and ability, if not duty, to represent Defendant in this matter, Defendant requests the appointment of two sets of special counsel to represent him, apparently at taxpayer expense.

4. The Attorney General is the chief legal officer of the State, and, as such, has the constitutional duty of acting as legal advisor to and legal representative of the State.

Environmental Protection Agency v. Pollution Control Board, 69 Ill. 2d 394, 399 (1977). The Attorney General is "the law officer of the people, as represented in the State Government, and its only legal representative in the courts." *Id.* at 398 (quoting, *Fergus v. Russel*, 270 Ill. 304, 337 (1915)). As such, the Attorney General "has the prerogative of conducting legal affairs for the State." *Id.* at 399. In addition, "[i]t is noteworthy that neither the legislature nor the judiciary may deprive the Attorney General of [her] common law powers under the Constitution." *Id.*

5. Nonetheless, the Attorney General Act allows for the appointment of a special counsel:

Whenever the attorney general . . . is interested in any cause, civil or criminal, which it is or may be his duty to prosecute or defend, the court in which said cause or proceeding is pending may appoint some competent attorney to prosecute or defend such proceeding, and the attorney so appointed shall have the same power and authority in relation to such cause or proceeding as the attorney general would have had if present and attending the same.

15 ILCS § 205/6.

6. Recognizing the Attorney General's constitutional duties to the people of the State of Illinois, the Supreme Court of Illinois has defined the term "interested" very narrowly in applying the Attorney General Act. Specifically, the Supreme Court of Illinois has limited the application of the statute to two situations: (1) where the Attorney General is interested as a

private individual; and (2) where the Attorney General is an actual party to the litigation.

Environmental Protection Agency, 69 Ill. 2d at 401.

7. The Attorney General is not a party to this litigation, and it cannot be said that she is interested as a private individual. On October 26, 2006, prior to the initiation of any litigation, the Attorney General, by and through her office, issued an opinion regarding Defendant's withholding under FOIA of the records that provide the basis for this lawsuit. The Attorney General's opinion stated, in pertinent part: "The purpose of this letter is to ensure that the Office of the Governor and the agencies under the Governor's control properly respond to requests for information pursuant to the [FOIA]." Complaint at Exhibit C. Rather than reflecting any private, individual interest, the issuance of the opinion was well within the scope of the Attorney General's constitutional duties as the chief legal officer of the State.

8. Moreover, as the Supreme Court of Illinois set forth in *Environmental Protection Agency*:

It seems to us that if the Attorney General is to have the unqualified role of chief legal officer of the State, he or she must be able to direct the legal affairs of the State and its agencies. Only in this way will the Attorney General properly serve the State and the public interest. To allow the numerous state agencies the liberty to employ private counsel without the approval of the Attorney General would be to invite chaos into the area of legal representation of the State.

69 Ill. 2d at 401-02.

9. Defendant's request for the appointment of a special counsel in this action -- not because the Attorney General has any private, individual interest in the litigation or because she is named as a party, but because Defendant apparently disagrees with her October 26, 2006 legal opinion -- would invite chaos into the area of the State's legal representation. It would create

damaging precedent that would allow the Governor to replace the Attorney General as the State's chief legal officer whenever he disagrees with the Attorney General's legal advice, and it would seriously undermine the Attorney General's constitutional duty as the chief legal officer of the State.

10. Not only is it the Attorney General's constitutional duty to represent Defendant, but she has done so competently so far. It was the Attorney General's office, not Defendant's designated special counsel, that arranged for an extension of time for Defendant to respond to the Complaint. Had the Attorney General not done so, Defendant would have been at risk of default.

11. In this regard, Defendant's motion for leave to file a motion to dismiss is premature. Assuming that the parties' agreed order is entered, Defendant will have until and including March 27, 2007 in which to file any such motion, and there is no need for the relief Defendant requests.

WHEREFORE, Plaintiff respectfully requests Defendant's motions for the appointment of special counsel and for leave to file a motion to dismiss be denied.

Dated: March 6, 2007

Respectfully submitted,


Paul J. Offanedes
Ill. Bar No. 6205255
Cook County Attorney ID No. 43158
JUDICIAL WATCH, INC.
501 School Street, S.W., Suite 500
Washington, DC 20024
Tel.: (202) 646-5172
Fax.: (202) 646-5199

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that on March 6, 2007 I served a true and correct copy of the foregoing PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTIONS FOR APPOINTMENT OF SPECIAL COUNSEL AND FOR LEAVE TO FILE MOTION TO DISMISS, via first class U.S. Mail, postage prepaid, on the following:

Ronald A. Rascia
Katherine Laurent
Mark Bina
Assistant Attorneys General
100 W. Randolph Street, 13th Floor
Chicago, IL 60601

William J. Quinlan, Esq.
Matthew S. Ryan, Esq.
Andrew Stolfi, Esq.
Office of the Governor
100 W. Randolph Street, #16-100
Chicago, IL 60601

Michael J. Hayes, Sr., Esq.
John T. Roach, Esq.
Joseph J. Novak, Esq.
BELL, BOYD & LLOYD, LLP
30 West Madison Street, Suite 3100
Chicago, IL 60602


Paul J. Orfanedes