

19TH JUDICIAL DISTRICT COURT

OF THE

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

LOUISIANA STATE TROOPERS * NUMBER: 672,676 SEC. 24
ASSOCIATION, JAMES O'QUINN, ET AL *
VERSUS *
STATE POLICE COMMISSION *
*
*

DILATORY EXCEPTION OF PREMATURITY

NOW INTO COURT, through undersigned counsel, come Defendants, the Louisiana State Police Commission (hereafter "LSPC") and the Executive Director of the LSPC, Jason Hannaman (hereafter "the Executive Director" or "Mr. Hannaman"), and, excepts to the Petition for Declaratory Judgment filed by the Louisiana State Troopers Association, James O'Quinn, Derek Sentino, Brett Travis, Chris Wright, Larry Badeaux, Jr., Robert Mire, Rodney Hyatt, John Heath Miller, Hackley E. Willis, Jr., Andy Stephenson, Dale Latham, John M. Trahan, Mike Neal and Chase Huval (hereafter referred to as "Plaintiffs") as premature. In support of the Dilatory Exception of Prematurity, the LSPC and Mr. Hannaman show the Court the following:

1.

Plaintiffs filed the present Petition for Declaratory Judgment on August 15, 2018, and asked the Court to determine whether or not "proposed amendments"¹ to LSPC Rule 14.2 and the "threats"² contained in General Circular No. 191 that was issued by the Executive Director are unconstitutional.

2.

Plaintiffs' Petition for Declaratory Judgment seeks to have this Court rule as unconstitutional, amendments to LSPC Rule 14.2 that were never adopted, promulgated or

¹ Quoting from ¶19 of the Petition for Declaratory Judgment.

² Quoting from ¶19 of the Petition for Declaratory Judgment.
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enacted.

3.

Plaintiff's Petition for Declaratory Judgment also seeks to have this Court rule as unconstitutional, General Circular No. 191 that was issued by the Executive Director. However, a General Circular provides guidance only, and it is not a rule nor does it have the force and effect of law. Moreover, General Circular No. 191 does not contain any penalty provisions for violation.

4.

There is no justiciable controversy as Plaintiffs have not alleged that anyone is considered to have violated any provisions whether proposed or in a General Circular. Rather, Plaintiffs seek to obtain a ruling based on hypothetical, and as such Plaintiffs' suit is premature and should be dismissed.

5.

This matter has not been set for trial. Further, in connection with this Dilatory Exception of Prematurity, Defendants will offer testimony of witnesses.

6.

Furthermore, Defendants attach and file the following exhibits in connection with this Dilatory Exception of Prematurity:

- Exhibit A: General Circular No. 190
- Exhibit B: Minutes of LSPC meeting held on February 8, 2018
- Exhibit C: Minutes of LSPC meeting held on March 8, 2018
- Exhibit D: Minutes of LSPC meeting held on April 12, 2018
- Exhibit E: General Circular No. 191
- Exhibit F: General Circular No. 2016-020

WHEREFORE, Defendants, the Louisiana State Police Commission and Jason Hannaman, pray that their Exception of Prematurity be maintained and that the Petition for Declaratory Judgment filed by Plaintiffs be dismissed as premature.

Respectfully submitted,

By M Lenore Feeney
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Attorneys for the State Police Commission

- CERTIFICATE -

I certify that a copy of the foregoing was this day sent via U.S. Mail, properly addressed and postage prepaid, to: Floyd J. Falcon, Jr., Avant & Falcon, P. O. Box 2667, Baton Rouge, Louisiana 70821 and to: Jeff Landry, Louisiana Attorney General, 1885 N. 3rd St., Baton Rouge, LA 70802.

Baton Rouge, Louisiana, this 9th day of April, 2019.

M Lenore Feeney
M. Lenore Feeney

SERVICE INFORMATION:

PLEASE SERVE:

PLAINTIFFS THROUGH THEIR ATTORNEY OF RECORD:

Floyd J. Falcon, Jr.
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STATE POLICE COMMISSION *

*

*

*

RULE TO SHOW CAUSE

IT IS HEREBY ORDERED that Plaintiffs, the Louisiana State Troopers Association, James O'Quinn, Derek Sentino, Brett Travis, Chris Wright, Larry Badeaux, Jr., Robert Mire, Rodney Hyatt, John Heath Miller, Hackley E. Willis, Jr., Andy Stephenson, Dale Latham, John M. Trahan, Mike Neal and Chase Huval appear and show cause at _____ o'clock _____.M. on the _____ day of _____, 2019 as to why the Dilatory Exception of Prematurity filed on behalf of the State Police Commission and Jason Hannaman should not be granted and why this Court should not dismiss the Plaintiffs' Petition, without prejudice and at plaintiffs' cost.

Hon. Judge R. Michael Caldwell
19th JUDICIAL DISTRICT COURT

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**MEMORANDUM IN SUPPORT OF
DILATORY EXCEPTION OF PREMATURITY**

MAY IT PLEASE THE COURT:

Defendants, the Louisiana State Police Commission ("hereafter LSPC") and the Executive Director of the LSPC, Jason Hannaman (hereafter "Mr. Hannaman" or "the Executive Director"), submit this Memorandum in Support of Dilatory Exception of Prematurity that was plead as part of Defendants' Answer. The dilatory exception of prematurity "questions whether the cause of action has matured to the point where it is ripe for judicial determination." La. Code Civ. P. art. 926(A)(1); *Spradlin v. Acadia-St. Landry Med. Found.*, 98-1977, p. 4 (La. 2/29/00), 758 So.2d 116, 119. When a dilatory exception of prematurity is raised, La. Code Civ. P. art. 930 provides that evidence may be introduced at the contradictory hearing on the exception to "support or controvert any of the objections pleaded." If evidence is admitted at the hearing, "the exception must be resolved on the evidence presented, rather than on the allegations in the petition." *SteriFx, Inc. v. Roden*, 41,383, p. 4 (La. App. 2 Cir. 8/25/06), 939 So.2d 533, 536.

Defendants intend to introduce evidence and witness testimony at the hearing on this exception which will prove that the lawsuit filed by Plaintiffs is premature and should be dismissed.

I. FACTUAL BACKGROUND

Plaintiffs seek to have this Court determine, by declaratory judgment, whether “proposed amendments”¹ to State Police Commission Rule 14.2 and the “threats”² contained in General Circular No. 191 that was issued by Jason Hannaman, Executive Director of the LSPC, are unconstitutional. A review of the authority of the LSPC and its executive director might be helpful to the Court’s understanding of the issues before it.

The LSPC was established in Louisiana Constitution Art. X, §43, and was “vested with broad and general rulemaking and subpoena powers for the administration and regulation of the classified state police service, including the power to adopt rules for regulating employment, promotion, demotion, suspension, reduction in pay, removal, certification, qualifications, political activities, employment conditions, compensation and disbursements to employees, and other personnel matters and transactions;...and generally to accomplish the objectives and purposes of the merit system of state police service as herein established.” La. Const. Art. X, §48 (A)(1). Additionally, Louisiana Constitution Art. 10, §44 mandates that “The commission shall appoint a director and such personnel as shall be necessary to carry out its duties.”

The LSPC adopted rules pursuant to the power vested in it, and the initial set of rules that were adopted in 1991 were largely a copy of those rules that were previously adopted and promulgated by the Louisiana State Civil Service Commission, the Commission that previously maintained authority over the classified state police service.

The Louisiana State Civil Service Commission adopts and promulgates rules, and its executive director issues “General Circulars.” A General Circular is an official written document that is addressed for general distribution among the classified service. Its purpose is to convey important information such as: guidance on policies and/or rules; notification of proposed amendments to rules; announcements of State holidays; notification of emergency closures, notification of employee elections for the representative on the Commission; announcement of pay hearings; notice of Commission

¹ Plaintiffs’ Petition, ¶19

² Plaintiffs’ Petition, ¶19

decisions; and notification of organizational restructuring. In short, the purpose of the “General Circular” is to make general information and guidance available to the classified members of the service. The General Circular is not a “rule” adopted and promulgated by the Commission, nor does it have the effect or force of law.

Like the Executive Director of the State Civil Service Commission, the Executive Director of the LSPC also issues General Circulars. These General Circulars (dating back to General Circular No. 125) are located on its website at <http://laspc.dps.louisiana.gov>. Earlier issuances are contained in bound volumes at the offices of the LSPC.

In or around January, 2018, following alleged complaints and investigations concerning illegal, political activity of members of the classified state police service, the LSPC sought to amend LSPC Rule 14.2 concerning “Prohibited Political Activity.” Proposed amendments were drafted and, in keeping with the requirements of LSPC Rule 2.10, that any proposed amendments to a rule shall be approved by the Commission only after fifteen days written notice and approval in a public hearing, General Circular No. 190³ was posted by the Executive Director on January 23, 2018. This General Circular provided notice that the LSPC would hold a public hearing on February 8, 2018, to consider revisions/amendments to Chapter 14 of LSPC Rules. Specifically, General Circular No. 190 contained proposed amendments to LSPC Rule 14.2. Between the time of the posting and the February 8, 2018 meeting date, Mr. Hannaman received public comment regarding the proposed changes. However, at the February 8, 2018 meeting, the LSPC voted to table the consideration of Chapter 14 rule changes as promulgated in General Circular 190.⁴ Discussion of amendments to LSPC Rule 14.2 was once again tabled at the next monthly meeting on March 8, 2018.⁵ At the April 12, 2018 meeting,

³ General Circular No. 190 is attached to the Dilatory Exception of Prematurity as Exhibit A.

⁴ The minutes of the LSPC meeting held on February 8, 2018 are attached to the Dilatory Exception of Prematurity as Exhibit B.

⁵ The minutes of the LSPC meeting held on March 8, 2018 are attached to the Dilatory Exception of Prematurity as Exhibit C.

the issue of amending LSPC Rule 14.2 remained tabled.⁶ The proposed changes to LSPC Rule 14.2 were never made, and the LSPC never voted to amend LSPC Rule 14.2 to include the proposed amendments.

On April 12, 2018, Mr. Hannaman, published General Circular No. 191.⁷ The content of this General Circular⁸ was almost verbatim General Circular No. 2016-020 that was previously published by the Executive Director of the Louisiana State Civil Service Commission, Byron Decoteau, two years earlier on July 15, 2016.⁹ The subject line of General Circular No. 191 provides: "Guidelines on Prohibited Political Activity for Classified Members of the State Police Service," and the General Circular references the laws which prohibit political activity in the Louisiana Constitution and in Chapter 14 of the LSPC rules. The General Circular further cautions the reader that the State Police Commission should be consulted regarding any questions. Because this was a General Circular and not an LSPC rule or an amendment to an LSPC rule, the General Circular was signed by the Executive Director and published by him, and there was no vote from the LSPC required or held.

II. LAW AND ARGUMENT

A. BECAUSE THERE WAS NO AMENDMENT TO LSPC RULE 14.2, IT IS PREMATURE FOR THIS COURT TO DETERMINE WHETHER ANY PROPOSED AMENDMENT IS UNCONSTITUTIONAL

Although the LSPC posted, via General Circular No. 190, *proposed* amendments to LSPC Rule 14.2, those amendments were never adopted by vote of the LSPC, and, therefore, there were no changes made to LSPC Rule 14.2. Plaintiffs' Petition for Declaratory Judgment seeks to have this Court rule as unconstitutional, amendments to LSPC Rule 14.2 that were never adopted, promulgated or enacted.

⁶ The minutes of the LSPC meeting held on March 8, 2018 are attached to the Dilatory Exception of Prematurity as Exhibit D.

⁷ The Executive Director of the State Police Commission is authorized "to perform any other acts or functions which are necessary or desirable to carry out the purposes of the State Police Service Article, or which he may be directed to perform by the Commission or the Chairman." LSPC Rule 3.1(h).

⁸ General Circular No. 191 is attached to the Dilatory Exception of Prematurity as Exhibit E.

⁹ General Circular No. 2016-020 issued by the Executive Director of the State Civil Service Commission is attached as Exhibit F.

The availability of a declaratory judgment is limited to “cases of a present, justiciable controversy and [courts] will not render merely advisory opinions.”¹⁰ “A ‘justiciable controversy’ has been generally defined as a dispute between ‘adverse parties with opposing claims ripe for judicial determination,’ involving ‘specific adversarial questions asserted by interested parties based on existing facts.’”¹¹ Significantly, the Nineteenth Judicial District Court in *Louisiana Federation of Teachers, supra.*, reviewed controlling law from the First Circuit Court of Appeal and stated:

In the context of declaratory judgment, a justiciable controversy must involve uncertain or disputed rights in an immediate and genuine situation, and must be a substantial and actual dispute as to the legal relations of parties having real, adverse interests. *Steiner v. Reed*, 2010-1465, p. 6 (La. App. 1 Cir. 02/11/2011), 57 So.3d 1188, 1192. Such a justiciable controversy must be distinguished from one that is merely hypothetical or abstract, or one presenting an issue that is academic, theoretical, or based on a contingency that may or may not arise. *Id.*¹²

Plaintiffs argue that this Court should find “proposed” amendments to LSPC Rule 14.2 unconstitutional. The LSPC did not vote to adopt amendments to LSPC Rule 14.2; therefore, an amended rule was never promulgated or enacted. Plaintiffs’ argument concerning the constitutionality of an amended LSPC Rule 14.2 is merely hypothetical and does not present a justiciable controversy before the Court. For these reasons, Plaintiffs’ claim that the “proposed amendments” to LSPC Rule 14.2 are unconstitutional is premature and should be dismissed.

B. General Circular No. 191 Does Not Have the Force of Law, and No State Trooper has been Disciplined for Violating a General Circular

Plaintiffs argue that General Circular No. 191 is unconstitutional. Importantly, General Circular No. 191 is not a “rule” of the LSPC and serves merely as an advisory opinion of the Executive Director without force of law. Moreover, there is no penalty incorporated or included with the guidance contained in General Circular No. 191. As was previously stated in the “Factual Background” portion of this memorandum, General Circular No. 191 was issued by the Executive Director of the LSPC on April 12, 2018,

¹⁰ *Church Point Wholesale Beverage Co., Inc. v. Tarver*, 614 So.2d 697, 701 (La. 1993)

¹¹ *Louisiana Federation of Teachers v. State of Louisiana*, 2012 WL 6220138 (La. Dist. Ct. 2012)

¹² *Id.*

for purposes of providing guidance to those in the classified state police service regarding political activity in the same manner the Executive Director of the State Civil Service Commission issued his General Circular No. 2016-020 on July 15, 2016 to the classified employees in the state civil service. General Circular No. 191 is not a rule that was adopted or enacted by the LSPC.

General Circulars should be likened to "Guidance" issued by the Equal Employment Opportunity Commission ("EEOC") or the Department of Labor, neither of which have the force of law, and, therefore, cannot be found to be unconstitutional. EEOC guidance and General Circulars contain recommended procedures that, although they do not have the force of law, may be considered by the Courts, or in this case, by the LSPC, as "recommendations" in determining whether individuals have attempted, in good faith, to comply with the "actual" law.

Aside from the fact that a General Circular is not a law that can be found unconstitutional, the Court should also consider that there has been no allegation that a Louisiana state trooper was found to have "violated" the provisions contained in General Circular No. 191. Therefore, for the same reasons asserted in connection with subpart A, above, Plaintiffs' claims that General Circular No. 191 are unconstitutional are premature, because there is no "justiciable controversy," at this time, for there to be a declaratory judgment or proceeding seeking same.

III. CONCLUSION

In conclusion, Defendants move this Court to dismiss Plaintiffs' Petition for Declaratory Judgment on the grounds that the Plaintiffs' claims are premature.

Respectfully submitted,

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*Attorneys for the Louisiana State Police
Commission*

- CERTIFICATE -

I certify that a copy of the foregoing was this day sent via U.S. Mail, properly addressed and postage prepaid, to: Floyd J. Falcon, Jr., Avant & Falcon, P. O. Box 2667, Baton Rouge, Louisiana 70821 and to Jeff Landry, Louisiana Attorney General, 1885 N. 3rd

Baton Rouge, Louisiana, this 9th day of April, 2019.

M. Lenore Feeney
M. Lenore Feeney

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