



Chambers of
MICHAEL H. SIMON
United States District Judge

United States District Court
DISTRICT OF OREGON
1327 United States Courthouse
1000 S.W. Third Avenue
Portland, Oregon 97204

By email to:

Ms. Andrea Olson
3404 SW Comus Street
Portland, OR 97219

July 28, 2016

Re: *Andrea Olson v. MBO Partners, Inc.*, Case No. 3:15-cv-2216-HZ

Dear Ms. Olson:

Earlier today, I granted your Motion for Recusal. Your case has been randomly reassigned to Judge Hernandez. I am writing this letter to you, with copies to all counsel in this case, to clarify that, notwithstanding my granting your motion, I do not believe that I am or was in any way partial in this case, either for or against any party.

You first comment on my past involvement with the American Civil Liberties Union (ACLU) of Oregon. My involvement with that organization ended when I was nominated to be a federal judge by President Obama in 2010, more than six years ago. None of my prior volunteer work for the ACLU involved any of the issues, topics, or parties involved in the above-referenced lawsuit.

You also comment on my continuing involvement with the Classroom Law Project (CLP). I have been on the board of that organization for more than 20 years and previously served as its president. The mission of CLP is to teach civics to students in grades 5 through 12 and to assist teachers in improving their skills in teaching civics. Every year I meet with students from grade school through high school to teach civics. Also, on occasion, I meet with teachers.

You correctly note that attorneys from the law firms of Davis Wright Tremaine and Perkins Coie (my former law firm until 2011) also serve on the board of CLP. You may

not know, however, that, in some cases, I have entered rulings during my time on the bench against clients of both of those law firms, and in some cases, I have entered rulings in favor of clients of those law firms. I decide all cases based only on the facts and the law.

The identity of a party's lawyer or law firm (or even whether a party is represented at all) is never considered by me when rendering a decision. In fact, I have heard several cases where one side was represented by a lawyer and the other side (typically, the plaintiff) appeared *pro se*, that is represented herself or himself. I recall making some rulings that went against the *pro se* party, but I also recall making some rulings in favor of the *pro se* party. In one case, I granted a permanent injunction against a governmental defendant in favor of a *pro se* plaintiff. In another case that went to trial (where both sides waived their right to a jury), I ruled in favor of the *pro se* plaintiff and awarded money damages to that self-represented plaintiff.

In your letter, you also refer to my wife of 31 years. She became a member of Congress in 2012, after I had already become a federal judge. None of her activities have any bearing on any of my decisions. You also make reference to her attendance at an event organized by the Bonneville Power Administration (BPA) and her interest in "energy" issues. I understand that the BPA has some connection with the matters raised in the above-referenced lawsuit.

First, I was unaware of her attendance at that event. Second, and more significantly, her attendance at events and her participation in any other activities are entirely irrelevant to how I rule, which always is based on the facts of a particular case and the applicable law. Indeed, you may be unaware of the fact that in May of this year, I entered a ruling in an environmental lawsuit where my ruling was against the position taken by BPA and related governmental agencies.

In addition, you refer to the fact that I denied your request for help finding legal counsel. As you know, your original complaint was filed by an attorney representing you, Mr. Michael Owens. Approximately two months later, Mr. Owens moved to withdraw as your counsel. He explained that you preferred to be represented by other counsel and that you currently were seeking substitute counsel. I granted that motion. Later, after Defendant moved to dismiss or, in the alternative, to compel arbitration, I granted you several extensions of time to secure counsel. After you received the latest extension that

you requested, you asked me for “court appointed counsel,” adding that you were requesting “legal help from the court.” As you know, I denied your request.

As I explained in my Order dated July 5, 2016,

Generally, there is no constitutional right to counsel in a civil case. *United States v. 30.64 Acres of Land*, 795 F.2d 796, 801 (9th Cir. 1986). The Court has discretion, however, under 28 U.S.C. § 1915(e) to appoint volunteer counsel for indigent civil litigants in exceptional circumstances. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009); *Agyeman v. Corr. Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004). While this court may appoint volunteer counsel in exceptional cases, it has no power to make a mandatory appointment. *Mallard v. U.S. Dist. Court for S. Dist. of Iowa*, 490 U.S. 296, 301-08 (1989).

In determining whether exceptional circumstances exist, a court evaluates the plaintiff’s likelihood of success on the merits and the ability of the plaintiff to articulate his or her claim *pro se* in light of the complexity of the legal issues involved. *Palmer*, 560 F.3d at 970; *Agyeman*, 390 F.3d at 1103. However, “[n]either of these factors is dispositive and both must be viewed together before reaching a decision on request of counsel under [former] section 1915(d).” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986); *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991).

Plaintiff has not requested *in forma pauperis* status and she paid the filing fee when she filed this case. Further, Plaintiff has not provided the Court with financial information sufficient for the Court to determine that she meets the requirements of an indigent party such that the limited exception in 28 U.S.C. § 1915(e) might apply. Even assuming, however, that Plaintiff can demonstrate that she is indigent, her motion is denied. The facts and legal issues involved in this case are not of substantial complexity and there is no indication that Plaintiff does not have the ability to

sufficiently articulate her claims. Additionally, at this stage of the proceeding, Plaintiff has yet to demonstrate a likelihood of success on the merits. Accordingly, there are no exceptional circumstances that support the appointment of counsel under § 1915(e).

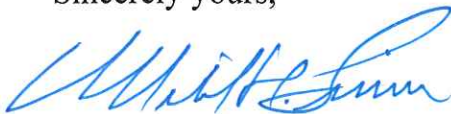
Dkt. No. 25.

As I explained in my order, there is no indication that you cannot afford counsel. Indeed, the motion filed by your previous counsel stated only that you were looking for substitute counsel. There are many people who cannot afford legal counsel, and I generally appoint volunteer counsel when I am persuaded that a party cannot afford counsel and justice requires the appointment of volunteer counsel. That is not the case here, in my opinion.

I regret your unhappiness with my conclusion, but that was my best judgment. Also, I regret that you may have concluded that something in my earlier involvement with the ACLU, my longstanding involvement with CLP, or any of my wife's activities justifies your questioning my impartiality. I assure you that at all times I was entirely impartial.

That said, I do not want you to have any doubts about my impartiality. For that reason, and for that reason alone, I have granted your motion and have recused myself from this case. Your lawsuit will be handled by Judge Hernandez and his staff.

Sincerely yours,



Michael H. Simon
United States District Judge

cc: All counsel of record (by email)