

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
C.A. NO. 1684CV00969-A

MASSACHUSETTS ASSOCIATION OF
COURT INTERPRETERS, INC., MOUSSA
ABBOUD, SOLEDADE GOMES
DEBARROS, ANAHIT FLANAGAN,
NORMA V. ROSEN-MANN, and MICHAEL
R. LENZ, individually, and on behalf of other
persons similarly situated,

Plaintiffs,

v.

EXECUTIVE OFFICE OF THE TRIAL
COURT,

Defendant.

**THE TRIAL COURT’S PARTIAL MOTION TO DISMISS THE SECOND
SUBSTITUTED AMENDED COMPLAINT**

Pursuant to Rule 12(b)(1) and Rule 12(b)(6), the Massachusetts Trial Court moves to dismiss the retaliation cause of action recently asserted in Plaintiffs’ Second Substituted Amended Complaint. Plaintiffs Massachusetts Association of Court Interpreters, Inc. (“MACI”), Moussa Abboud, Soledade Gomes Debarros, Anahit Flanagan, Norma Rosen-Mann and Michael Lenz (“Plaintiffs”) have amended their operative complaint to assert a cause of action for retaliation for the exercise of rights protected by the First Amendment of the U.S. Constitution and Article 16 of the Declaration of Rights of the Massachusetts Constitution.

In 2021, the Trial Court’s Committee for the Administration of Interpreters for the Trial Court (“Committee”)—whose members included the former Chief Justice of the Trial Court, the Hon. Paula M. Carey, as well as seven other judges and clerk magistrates—promulgated a new set of Standards & Procedures (“S&P”) for staff and per diem court interpreters pursuant to the

Committee's statutory duty under G.L. c. 221C, § 7. Plaintiffs appear to allege that the promulgation of this new S&P by the Trial Court's Committee constituted retaliation against Plaintiffs for their filing of this litigation. They assert a claim of retaliation pursuant to 42 U.S.C. § 1983, the Massachusetts Civil Rights Act ("MCRA"), G.L. c. 12, §§ 11H, 11I, and Article 16 of the Massachusetts Declaration of Rights, and seek declaratory and injunctive relief. The amended complaint must be dismissed on several grounds:

First, Plaintiffs' retaliation claims must be dismissed on sovereign immunity grounds. Both the U.S. Supreme Court and the Supreme Judicial Court have held that the Commonwealth is not a "person" under § 1983 or the MCRA, and thus Plaintiffs cannot sue the Commonwealth under either statute, including for declaratory or injunctive relief.

Second, the claim for retaliation under the First Amendment would nevertheless be defective for failure to state a claim. First Amendment claims must satisfy several elements, including that the plaintiff spoke as a citizen on a matter of public concern, that the plaintiff experienced an adverse action, and that the protected speech was a substantial or motivating factor in the adverse action. Plaintiffs have failed to plead these necessary elements.

Third, Plaintiffs' other retaliation cause of action, brought pursuant to the MCRA, would likewise fail to state a claim. Article 16 protections are contiguous with First Amendment protections, and therefore the Article 16 claim is defective for the same reasons as the First Amendment claim. Moreover, the Article 16 claim is and must be brought pursuant to MCRA, which requires allegations of threats, intimidation or coercion—none of which are pleaded here.

For the foregoing reasons, and for those set forth in the accompanying memorandum of law, Plaintiffs' cause action of action for retaliation of their rights to free speech under the First Amendment or Article 16 must be dismissed pursuant to Rule 12(b)(1) and Rule 12(b)(6).

Respectfully submitted,

Defendant THE TRIAL COURT

By its Attorneys,

MAURA HEALEY,
ATTORNEY GENERAL

/s/ Katherine B. Dirks

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Date: April 13, 2022

SUPERIOR COURT RULE 9C CERTIFICATE OF COMPLIANCE

I hereby certify that on April 8, 2022, I, Katherine Dirks, counsel for the Trial Court, held a telephonic conference pursuant to Superior Court Rule 9C(a) with Alan Rom, counsel for the plaintiffs, in an attempt to narrow or resolve the dispute that is the subject of the instant motion. The parties have been unable to resolve the dispute.

/s/ Katherine B. Dirks
Katherine B. Dirks
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I have this day, April 13, 2022, served the foregoing document upon all parties, by emailing a copy to:

Alan Jay Rom, Esq.
Rom Law P.C.
alan@romlawoffice.com.

/s/ Katherine B. Dirks
Katherine B. Dirks