

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
CIVIL ACTION NO. 2016-00969

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.

LEWIS "HARRY" SPENCE, in his capacity :
as Administrator of the Trial Court, and his :
successors in office, MARIA FOURNIER, :
in her capacity as the Director of the Support :
Services Department of the Trial Court :
Office of Court Management and the Office :
of Court Interpreter Services Coordinator for :
the Administrative Office of the Trial Court, :
and her successors in office, and BRUCE :
SAWAYER, in his capacity as Manager of :
Accounting of the Fiscal Affairs Department :
of the Trial Court, and his successors in :
office, :

Defendants

MOTION TO ADD DEFENDANTS AND TO RE-DEFINE THE CLASS

Now come the plaintiffs and request that, pursuant to M.R.Civ.P. 15(a), and following the procedures of Rule 9A of the Rules of the Superior Court, this Court permit them to redefine the class and substitute party defendants. The grounds for this motion are as follows.

1. In their amended complaint, filed on or about Mach 24, 2016, plaintiffs defined the class membership as “The class consists of both certified and screened¹ court interpreters who regularly make themselves available to and provide court interpreter services for OCIS in the Commonwealth of Massachusetts, yet are or may in the future be treated as *per diem* court interpreters by OCIS.” Amended Complaint, ¶8. This definition went to their claim of misclassification and the failure of defendants to comply with the wage statute regarding proper pay for employees.

2. In its Memorandum of Decision on Defendants’ Motion to Dismiss, dated November 3, 2016, the Court granted Defendants’ Motion on the classification issue based on Defendants’ claim of sovereign immunity, dismissed the plaintiffs’ wage claims under G.L. c. 149, §148B, and dismissed other claims, but left to be determined whether plaintiffs’ claim that the Standards and Procedures, that each *per-diem* court interpreter must sign in order to work, constitutes a contract that plaintiffs claimed defendants violated (Count III).

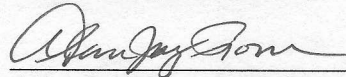
3. Following the Court’s rulings, Defendants filed their Answer to Plaintiffs’ Amended Complaint and Plaintiffs, in February 2017, filed a Request for Production of Documents. Defendants’ response was to agree to provide the documents related to the five named individual plaintiffs, but to deny production to the class, as it was defined. Plaintiffs propose that the class be defined as follows: “the class consists of all certified and

¹ The definitions and qualifications of screened and certified court interpreters are set forth in Sections 5.03 and 5.04 of the S & P, Exhibit A of Substituted Amended Complaint.

screened *per-diem* court interpreters whose rights under the Standards and Procedures have been violated by Defendants.”

4. Plaintiff proposes that, in addition to the granting of this motion as to the description of the class, it is necessary to change two of the named defendants, Lewis “Harry” Spence and Maria Fournier, as they no longer hold the positions in the Trial Court. Plaintiffs propose that Jonathan S. Williams be substituted for Lewis “Harry” Spence, as Administrator of the Trial Court and Sybil Martin be substituted for Maria Fournier as Senior Manager of Support Services of the Trial Court Office of Court Management and the Office of Court Interpreter Services Coordinator for the Administrative Office of the Trial Court. Plaintiffs also request that the Executive Office of the Trial Court be added as a party defendant. A Substituted Amended Complaint is attached hereto.

Respectfully submitted,



Alan Jay Rom, BBO# 425960

Rom Law PC

P.O. Box 585

Chelmsford, MA 01824

617/776-0575-Tel.

978/455-9589-Tel.

617/209-7714-Fax

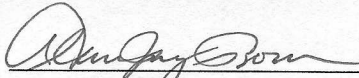
alan@romlawoffice.com

www.romlawoffice.com

DATED: April 23, 2018

CERTIFICATE OF SERVICE

I, Alan Jay Rom, counsel for Plaintiffs in the above-captioned action, hereby certify that a copy of Motion to Redefine Class and Party Defendants and supporting memorandum was served on Defendants by mailing a copy of the foregoing first-class, postage prepaid, to Katherine Dirks, Esq., Assistant Attorney General, Trial Division/Government Bureau, Office of the Attorney General, One Ashburton Place, Room 1813, Boston, Massachusetts, this 23rd day of April, 2018.



Alan Jay Rom

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
CIVIL ACTION NO. 2016-00969

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. :

LEWIS "HARRY" SPENCE, in his capacity: :
as Administrator of the Trial Court, and his :
successors in office, MARIA FOURNIER, :
in her capacity as the Director of the Support: :
Services Department of the Trial Court :
Office of Court Management and the Office :
of Court Interpreter Services Coordinator for: :
the Administrative Office of the Trial Court, :
and her successors in office, and BRUCE :
SAWAYER, in his capacity as Manager of :
Accounting of the Fiscal Affairs Department: :
of the Trial Court, and his successors in :
office, :
Defendants :

MEMORANDUM IN SUPPORT OF MOTION TO SUBSTITUTE
PARTY DEFENDANTS AND TO RE-DEFINE THE CLASS

Pursuant to M.R.Civ.P. 15 (a) Plaintiffs request that the Court permit the substitution of party defendants and to re-define the class. The reasons for both are stated in their Motion. This Memorandum explains why the Court should allow the Motion.

The current Rule 15 (a) was intended to liberalize the grounds for amending pleadings when appropriate. The import of this liberalization is reflected in the sentence, “leave shall be freely given when justice so requires.”

The procedural history of this case demonstrates why “justice so requires” that this motion be granted. Plaintiffs filed this case in October 2015 in the Supreme Judicial Court pursuant to the provisions of G.L. 211, §3, with several causes of action, including a claim of misclassification of *per-diem* court interpreters being misclassified as independent contractors, when many of them met the test for employee status, in violation G.L. c. 149, §148B. The complaint specified other causes of action, including the Standards and Procedures (“S&P”) of the Trial Court, claiming that the S&P, constituted a contract, and that the Trial Court violated many of its provisions. The definition of the class in the original (and Amended Complaint) was:

“The class consists of both certified and screened¹ court interpreters who regularly make themselves available to and provide court Interpreter services for OCIS in the Commonwealth of Massachusetts yet are or may be in the future be treated as per diem court Interpreters by OCIS.

Defendants objected to this case being in the Supreme Judicial Court under G.L. 211, §3 and, following briefing, the Single Justice ordered that the case be transferred to the Superior Court. Following this order, Plaintiffs filed an Amended Complaint to comply with this order and added additional claims of retaliation. Defendants then filed a motion to dismiss and, following a hearing on the motion in June 2016, this Court ruled on the Motion to Dismiss in November 2016. The Court granted the Motion to Dismiss on several of plaintiffs’ causes of action, including the claim of misclassification under G.L. c. 149, §148B, based on the doctrine

¹ “The qualifications of screened and certified court interpreters are set forth in Sections 5.03 NS 5.04 of the S&P” which was attached to the original Complaint, and the Amended Complaint, and to the proposed Substituted Amended Complaint, attached to the Motion to Substitute Party Defendants and to Re-Define the Class.

of sovereign immunity and that the section regarding payment of wages did not include paying plaintiffs, who were considered independent contractors, and not employees. The Court did not dismiss plaintiffs claim that the S&P constituted a contract and allowed plaintiffs to pursue that claim.

Following the Court's ruling, and defendants' answer to the Amended Complaint, plaintiffs submitted discovery requests, to which the defendants objected to providing class-based documents, and the plaintiffs and defendants began a series of discussions to see if the issues could be resolved by agreement. These discussions proved to be unsuccessful and both parties agreed that the Tracking Order should be extended to permit this case to be prepared for trial.

During this time, Lewis "Harry" Spence, Administrator of the Trial Court, left the employment of the Trial Court, and was replaced by Jonathan S. Williams. Similarly, Maria Fournier left the employment of the Trial Court as Director of Support Services Department of the Trial Court Office of Court Management and the Office of Court Interpretive Services Coordinator for the Administrative Office of the Trial Court and was replaced by Sybil Martin.² These two named defendants were only sued in their official, not individual capacity, and the Amended Complaint includes in the description, "and their successors in office." Their substitution should be by operation of law. Mr. Williams and Ms. Martin are the successors in office to Mr. Spence's and Ms. Fournier's positions. Plaintiffs desire to redefine the class as follows: "the class consists of all certified and screened *per-diem* court interpreters whose rights under the Standards and Procedures have been violated by Defendants."³

² At the suggestion of Defendants' counsel, Plaintiffs agree to add the Executive Office of the Trial Court as a party defendant.

³ By this motion, Plaintiffs do not abandon their claim that they were misclassified and treated as *per-diem* as independent contractors instead of as employees under G.L. c. 149, §148B, and other claims in the Amended

If the court grants this Motion, Plaintiffs will pursue their initial discovery requests to obtain information related to the re-defined class, first by negotiation, and, if necessary, by a motion to compel.

In a case from Massachusetts, Forman v. Davis, 371 U.S. 178 (1962), the plaintiff brought suit to enforce an oral agreement against the estate of her father, who, she claimed, orally agreed to not execute a will and permit her to claim under the estate by intestate succession laws if she would care for him and her mother in their lifetimes. The District Court dismissed the case, holding the oral agreement unenforceable on the basis of the Statute of Frauds. The plaintiff sought to amend the complaint under Rule 15 of the Federal Rules of Civil Procedure to include a claim for *quantum meruit*, but the District Court denied the motion and the Court of Appeals affirmed. The Supreme Court reversed and held that the “outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the Federal Rules.” Id. at 181.

Rule 15(a) of the Massachusetts Rules of Civil Procedure follows the liberal interpretation of the Federal Rules. “Leave shall be given when justice so requires” gives this Court the discretion to permit amendments to the pleadings. In fact, as the 1973 Reporter’s Notes to the Massachusetts Rules point out, “Massachusetts practice is more liberal than Federal Rule 15(c) in allowing amendments adding or substituting party defendants after expiration of the period of limitations.” Wadsworth v. Boston Gas Company, 352 Mass. 86 (1967). And the 1973 Reporter’s Notes also commented that Rule 15(d) of the Massachusetts Rules was liberalized to

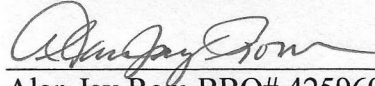
Complaint, but they recognize that they must await a final judgment on the claim pending in this Court before they can pursue their appeal of the November 2016 ruling on the Motion to Dismiss.

“allow a party to serve a supplemental pleading setting forth transactions, occurrences, or events postdating the pleading sought to be supplemented.”

CONCLUSION

For the reasons stated in Plaintiffs’ Motion and this supporting Memorandum, Plaintiffs’ pray that their Motion be allowed and that discovery proceed based on the new definition of the class set forth in their Motion. If allowed, Plaintiffs will amend the Amended Complaint⁴ accordingly and continue with discovery.

Respectfully submitted,



Alan Jay Rom BBO# 425960

Rom Law, P.C.

P.O. Box 585

Chelmsford, MA 01824

617/776-0575-Tel.

978/455-9589-Tel.

617/209-7714-Fax

alsn@romlawoffice.com

www.romlawoffice.com

Dated: April 23, 2018

⁴ A draft of the Substituted Amended Complaint is attached to the Motion to Substitute Party Defendants and to Re-Define the Class.