

**IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND**

OFFICER JOHN DOE, et al.,

Plaintiffs,

v.

**MONTGOMERY COUNTY,
MARYLAND,**

Defendant,

and

**ALEXA RENEHAN, MARYLAND
COALITION FOR JUSTICE AND
POLICE ACCOUNTABILITY, THE
WASHINGTON POST, AND
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS,**

Intervenor-Defendants.

Case No. C-15-CV-22-002523

JOINT MOTION FOR ASSIGNMENT

Intervenor-Defendants the Maryland Coalition for Justice and Police Accountability (the “Coalition”), Alexa Renehan (“Renehan”), and the Washington Post and the Reporters Committee for Freedom of the Press (the “Media Intervenors”) (together, “Intervenor-Defendants”) respectfully jointly move for the assignment of the Honorable Karla N. Smith to this matter for the pendency of the Action. Defendant Montgomery County, Maryland (the “County”) consents to this Motion and Plaintiffs have not responded to the Coalition’s request for their position.

As explained below, such a special assignment would promote judicial efficiency and economy given that Judge Smith is already familiar with the background of the case, the records in dispute, and the numerous parties involved. In further support of this Motion, the Intervenor-Defendants state as follows:

1. This is an Action by Plaintiffs Fraternal Order of Police, Montgomery County Lodge #35, Inc. (the “FOP”) and Officer Doe (the “Plaintiffs”) to determine whether certain records must be produced under the Maryland Public Information Act (the “MPIA”). The Plaintiffs also ask for the Court to declare Anton’s Law¹ unconstitutional. Am. Compl. ¶¶ 31.

2. The Plaintiffs filed the operative Amended Complaint on October 13, 2022. No responses were filed to the original complaint and none have been filed in response to the Amended Complaint.

3. At the beginning of the case, the Plaintiffs filed a consent motion for a protective order, which the Court initially granted. On September 14, 2022, the Plaintiffs filed a memorandum under seal styled “Memorandum in Support of Plaintiffs’ Complaint (Sealed)” (the “Sealed Brief”).

4. Thereafter, Renehan, the Coalition, and the Media Intervenors moved to intervene in this Action. All Intervenor-Defendants sought to modify or vacate the protective order.

5. On December 21, 2022, Judge Smith heard oral argument on the three motions to intervene and to vacate the protective order. On March 6, 2023, she granted the motions. *See* Mar. 6, 2023 Orders. Judge Smith also vacated the prior protective order in its entirety and entered an amended protective order, permitting attorneys party to this Action to review filings previously

¹ Anton’s Law changed the definition of “personnel records” to exclude records relating to an “administrative or criminal investigation of misconduct by a police officer.” Md. Gen. Prov. § 4-311.

made under seal in this Action (the “Amended Protective Order”). Mar. 6, 2023 Am. Protective Order. The Amended Protective Order requires that the Parties work together to reach an agreement regarding appropriate redactions to the Sealed Brief; such process is ongoing. In the event that the Parties cannot reach agreement on the redactions, the Court will hold a hearing. *Id.*

6. Maryland’s rule on judicial assignment prioritizes judicial economy: “[t]he authority provided in this Rule shall be exercised to ensure the full and efficient use of judges throughout the judicial system, to help equalize judicial workloads, and to expedite the disposition of pending cases.” Md. Rule 16-108(a). The rules provide County and Circuit Administrative Judges the power to judicially assign circuit court judges to specific litigations:

(d) County Administrative Judge. Subject to sections (b) and (c) of this Rule, the assignment of judges within the circuit court for a county having more than one resident judge shall be made by the County Administrative Judge. Those assignments may be made orally or in writing.

Md. Rule 16-108(d). County Administrative Judges have unique authority over judicial assignment. *Heit v. Stanbury*, 215 Md. App. 550, 569 (2013) (citing *Strickland v. State*, 407 Md. 344, 358 (2009)) (“[T]he Court of Appeals observed that the provisions of Md. Rule 16-101 make it clear that the assignment of Circuit Judges for trials or hearings is entirely within the province of Circuit and County Administrative Judges, subject only to the supervisory authority of the Chief Judge of the Court of Appeals and the administrative rules adopted by the Court of Appeals.”). Administrative Judges have broad discretion in judicial assignment. *Id.* (applying an abuse of discretion standard to an Administrative Judge’s failure to assign the case to a specific judge).

7. Judicially assigning Judge Smith to this Action would promote efficient use of the Court’s limited resources. Upon extensive briefing of the various motions to intervene and oral

argument, Judge Smith has already familiarized herself with this case's complex factual background and she is aware of the procedural posture. Further, as a result of the motions to intervene, Judge Smith is familiar with Anton's Law, the general nature of the disputed records, the procedural history of the case, the Parties, the claims, and the Plaintiffs' requests for declaratory and injunctive relief. Indeed, her familiarity with the case is evidenced by her 22-page opinion accompanying the orders granting the interventions and issuing the Amended Protective Order.

8. Judge Smith's prior background in this matter will promote efficiency going forward. As an initial matter, the Parties are in the process of working together to reach agreement regarding appropriate redactions to the Sealed Brief. The Parties dispute certain redactions in the Sealed Brief, which will require a hearing and resolution pursuant to the Amended Protective Order. Judge Smith, having authored the Amended Protective Order and who is generally familiar with the subject matter of the disputed records, is best suited to hear the dispute. Further, assigning this Action to Judge Smith for its pendency would avoid the possibility that various judges hear and resolve future disputes regarding the Amended Protective Order, which could lead to inconsistent applications of it. In addition, assigning Judge Smith to this Action would serve judicial efficiency because another judge would not be required to review the already complex case history, which includes more than 60 filings, a number that will grow as this litigation progresses. For the aforementioned reasons, the assignment of Judge Smith will promote efficient resolution of the case.

9. The Intervenor-Defendants therefore respectfully request that this case be specially assigned to Judge Smith.

10. In the alternative, in the event that the matter cannot be assigned to Judge Smith for any reason, the Intervenor-Defendants respectfully request that this case be specially assigned to a single judge so that the issues, including in particular the recurring issues concerning redaction and confidentiality, can be handled efficiently and consistently.

11. As indicated above, the County consents to this Motion.

12. Plaintiffs' counsel has not responded or taken any position on whether Plaintiffs consent to, oppose, or take no position on the relief requested in this Motion.

Respectfully submitted,

Dated: May 16, 2023

/s/ Mary E. Borja

Mary E. Borja (admitted *pro hac vice*)
Ashley-Anne L. Criss (Md Bar ID 1612130122)
Thomas B. Boley (admitted *pro hac vice*)
WILEY REIN LLP
2050 M Street NW
Washington, DC 20036
Tel.: 202-719-7000
Fax: 202-719-7049
mborja@wiley.law
acriss@wiley.law

Deborah A. Jeon (Md Bar ID 9006280125)
David Rocah (Md Bar ID 0312050001)
Sonia Kumar (Md Bar ID 1002040013)
Nicholas Taichi Steiner (MD Bar ID 1512160294)
ACLU FOUNDATION of MARYLAND
3600 Clipper Mill Road, Suite 350
Baltimore, MD 21211
(410) 889-8555
jeon@aclu-md.org
rocah@aclu-md.org
kumar@aclu-md.org
steiner@aclu-md.org

*Counsel for Maryland Coalition for Justice and
Police Accountability*

Matthew Zernhelt, Esq.
Baltimore Action Legal Team
6801 Oak Hall Lane Unit 788
Columbia MD 21045
(443) 690-0870
mzernhelt@baltimoreactionlegal.org

Jennifer Safstrom (admitted *pro hac vice*)
Vanderbilt Law School
First Amendment Clinic
131 21st Ave South
Nashville, TN 37203-1181
(615) 322-4964
jennifer.safstrom@vanderbilt.edu

Counsel for Alexa Renehan

Lisa Zycherman (Md Bar ID 0412150447)
Katie Townsend (admitted *pro hac vice*)
Sasha Dudding (admitted *pro hac vice*)
REPORTERS COMMITTEE FOR FREEDOM OF
THE PRESS
1156 15th St. NW, Suite 1020
Washington, DC 20005
(202) 795-9300
lzycherman@rcfp.org
ktownsend@rcfp.org
sdudding@rcfp.org

Counsel for Media Intervenors

CERTIFICATE OF SERVICE

I certify that on May 16, 2023, I directed that a copy of the foregoing Motion and the Proposed Order be served on all parties in this matter via the Court's MDEC e-filing system:

Anthony Michael Conti, Esq.
Conti Fenn LLC
36 South Charles Street
Suite 2501
Baltimore, MD 21201

*Counsel for Plaintiffs Officer John Doe and Fraternal Order of Police,
Montgomery County, Lodge 35, Inc.*

Edward B. Lattner, Esq.
Montgomery County Attorney's Office
101 Monroe Street
Third Floor
Rockville, MD 20850-2058

Haley M. Roberts, Esq.
Assistant County Attorney
101 Monroe Street
Third Floor
Rockville, MD 20850-20580

*Counsel for Defendant Montgomery County,
Maryland*

Lisa Beth Zycherman, Esq.
Davis, Wright & Tremaine, LLP
1919 Pennsylvania Ave NW
Suite 200
Washington, DC 20006-3402

*Counsel for the Intervenors The Washington Post
and Reporters Committee for Freedom of the Press*

Matthew Chapin Zernhelt
1601 Guilford Avenue, 2 South
Baltimore, MD 21202

Jennifer Safstrom
Vanderbilt Law School
First Amendment Clinic
131 21st Ave South
Nashville, TN 37203-1181

Counsel for Intervenor-Defendant Alexa Renehan

/s/ Ashley L. Criss
Ashley-Anne L. Criss