

STATE OF INDIANA) IN THE MARION CIRCUIT COURT
)
) ss:
COUNTY OF MARION) CAUSE NO. 49C01-1310-PL-038953

GLEND A RITZ, CHAIR INDIANA)
STATE BOARD OF EDUCATION &)
INDIANA SUPERINTENDENT OF)
PUBLIC INSTRUCTION,)

Plaintiff,)

v.)

DANIEL ELSENER, TONY WALKER,)
DAVID FREITAS, CARI WHICKER,)
SARAH O'BRIEN, ANDREA NEAL,)
BRAD OLIVER, B.J. WATTS, TROY)
ALBERT, GORDON HENDRY, in their)
Individual capacities as members of the)
Indiana State Board of Education,)
GEORGE ANGELONE, in his official)
capacity as Director of Legislative)
Services Agency,)

Defendants.)

FILED

OCT 24 2013

Shirley A. [unclear]

THE ATTORNEY GENERAL OF INDIANA'S MOTION TO STRIKE THE APPEARANCES AND COMPLAINT FILED ON BEHALF OF THE PLAINTIFF

Gregory F. Zoeller, Attorney General, by Kenneth L. Joel, and David A. Arthur Deputies Attorney General, respectfully moves the Court to strike the appearances and complaint filed by Plaintiff Glenda Ritz's counsel and states in support:

1. On October 22, 2013, Plaintiff, Glenda Ritz, in her official capacity as Chair of the Indiana State Board of Education and Indiana Superintendent of Public Instruction, sued the members of the Indiana Board of Education "in their individual capacities as members of the Indiana State Board of Education, and George Angelone in his official

capacity as Director of Legislative Services Agency, seeking declaratory and injunctive relief under Ind. Trial Rule 57, Indiana Code chs. 5-14-1.5, 34-14-1 and 34-26-1.

2. Attorneys Bernice A. N. Corely and Michael G. Moore filed the Complaint on behalf of Plaintiff Glenda Ritz.
3. Indiana Code § 4-6-2-1 provides, in part: "[the] attorney-general shall prosecute and defend all suits that may be instituted by or against the state of Indiana."
4. Without the consent of the Attorney General, no state official may hire or utilize private counsel to represent herself in an official capacity suit. *See State ex rel. Sendak v. Marion County Superior Court, Room No. 2*, 373 N.E.2d 145, 148 (Ind. 1978) (citing *State ex rel. Young v. Niblack*, 229 Ind. 596, 603, 99 N.E.2d 839, 841 (Ind. 1951) ("when the suit involves State officers or employees in their official capacities, the outside attorney may only act as an amicus curiae unless the Attorney General consents."))
5. "No agency, except as provided in this act [Indiana Code Section 4-6-5-1 through Indiana Code Section 4-6-5-6] shall have any right to name, appoint, employ or hire any attorney, or special or general counsel to represent it or perform any legal service in behalf of such agency and the state *without the written consent of the attorney-general.*" *Matter of Prop. Located at Marriott Inn, 505 Marriott Drive, Clarksville, Ind.*, 456 N.E.2d 444, 446 (Ind. Ct. App. 1983).
6. Therefore, as Chair of the Indiana State Board of Education and Indiana Superintendent of Public Instruction, the representation of Plaintiff Ritz's legal interests lies exclusively in the hands of the Attorney General.

6. The Attorney General has not authorized attorneys Bernice A.N. Corely and Michael G. Moore to appear on behalf of the State of Indiana, and any appearances should be stricken.
7. Absent such authorization, Indiana law prohibits the Chair of the Indiana State Board of Education and Indiana Superintendent of Public Instruction in her official capacity to employ counsel to seek declaratory and/or injunctive relief.
8. Because attorneys Bernice A.N. Corely and Michael G. Moore have no authority to represent the Plaintiff in her official capacity, their appearances should be stricken, together with the complaint signed by them.

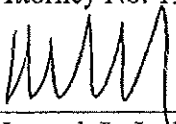
WHEREFORE, the Attorney General respectfully requests that the Court:

- 1) Strike the appearances, if any, of attorneys Bernice A. N. Corely and Michael G. Moore entered on behalf of Plaintiff, Glenda Ritz;
- 2) Strike the Complaint signed by attorneys Bernice A. N. Corely and Michael G. Moore;
and
- 3) Grant the Attorney General all other relief just and proper in the premises.

Respectfully submitted,

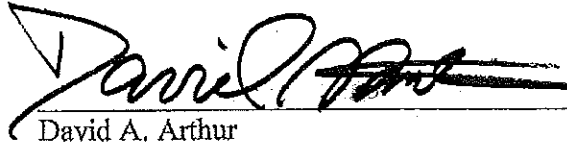
GREGORY F. ZOELLER
Attorney General of Indiana
Attorney No. 1958-98

By:



Kenneth L. Joer
Deputy Attorney General
Attorney No. 30271-49

By:

A handwritten signature in black ink, appearing to read "David A. Arthur", written over a horizontal line.

David A. Arthur
Deputy Attorney General
Attorney No. 2461-48

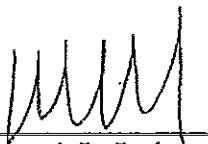
CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing has been duly served upon the person(s) listed below by personal service and by United States mail, first-class postage prepaid, on October 24, 2013:

Bernice A.N. Corley
Michael G. Moore
115 W. Washington Street
South Tower, Suite 600
Indianapolis, IN 46204
Attorneys for Plaintiff

Members of the Indiana Board of Education
Daniel Elsener
Tony Walker
David Freitas
Cari Whicker
Sarah O'brien
Andrea Neal
Brad Oliver,
B.J. Watts
Troy Albert
Gordon Hendry
Indiana Department of Education
South Tower, Suite 600
115 W. Washington Street
Indianapolis, IN 46204

George Angelone
Director of Legislative Services Agency
200 W. Washington Street, Suite 301
Indianapolis, IN 46204
(317) 233-0696



Kenneth L. Joel
Deputy Attorney General

Office of the Indiana Attorney General
Indiana Government Center South, 5th Floor
302 W. Washington Street
Indianapolis, IN 46204
Telephone: (317)233-8296
Fax: (317)234-2900
E-mail: Kenneth.Joel@atg.in.gov

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 ALBERT, GORDON HENDRY, in their)
 Individual capacities as members of the)
 Indiana State Board of Education,)
 GEORGE ANGELONE, in his official)
 capacity as Director of Legislative)
 Services Agency,)

Defendants.)

FILED
 OCT 26 2013
 CLERK OF COURT
 MARION COUNTY, INDIANA

**MEMORANDUM IN SUPPORT OF THE ATTORNEY GENERAL OF INDIANA'S
 MOTION TO STRIKE THE APPEARANCES AND COMPLAINT
FILED ON BEHALF OF THE PLAINTIFF**

A. Introduction

Plaintiff, Glenda Ritz, in her official capacity as Chair of the Indiana State Board of Education and Indiana Superintendent of Public Instruction ("State Plaintiff"), has filed a Complaint for declaratory and injunctive relief against sued the members of the Indiana Board of Education "in their individual capacities as members of the Indiana State Board of Education, and George Angelone in his official capacity as Director of Legislative Services Agency, seeking declaratory and injunctive relief under Ind. Trial Rule 57, Indiana Code chs. 5-14-1.5, 34-14-1 and 34-26-1" (hereinafter collectively referred to as "State Defendants").

In furtherance of this action, attorneys Bernice A.N. Corely and Michael G. Moore entered their appearance on behalf of State Plaintiff. Only the Attorney General represents the interests of the State of Indiana and its officers and employees in any suits that may be instituted by or against the State of Indiana. See Indiana Code Section 4-6-2-1. Accordingly, the appearance of any other attorney purporting to appear on behalf of a State official in an official capacity should be stricken, together with any filing made by that attorney.

B. Attorneys Bernice A.N. Corely and Michael G. Moore May Not Appear on Behalf of the State Plaintiff in Her Official Capacity Without the Consent of the Attorney General

Indiana Code Section 4-6-2-1 provides in part: “[the] attorney-general shall prosecute and defend all suits that may be instituted by or against the state of Indiana.” The purpose of the office of the Attorney General is “to give the State independent legal representation and to establish a general legal policy for State agencies.” *Indiana State Toll Bridge Commission v. Minor*, 139 N.E.2d 445, 448 (Ind. 1957). In doing so, the Attorney General must reconcile the conflicting legal views of multiple state officials and harmonize the state's legal position before the courts. For these reasons, the legislature has chosen to vest the sole responsibility for the legal representation of the State in the Attorney General. *State ex rel. Sendak v. Marion County Superior Court, Room No. 2*, 373 N.E.2d 145, 149 (Ind. 1978).

“No agency, except as provided in this act [Indiana Code Section 4-6-5-1 through Indiana Code Section 4-6-5-6], shall have any right to name, appoint, employ or hire any attorney, or special or general counsel to represent it or perform any legal service in behalf of such agency and the state *without the written consent of the attorney-general.*” *Matter of Prop. Located at Marriott Inn, 505 Marriott Drive, Clarksville, Ind.*, 456 N.E.2d 444, 446 (Ind. Ct. App. 1983). In the instant case, the Attorney General has not provided written consent to attorneys Bernice

A.N. Corely and Michael G. Moore to represent State Plaintiff in the Complaint filed in her official capacity. Absent such authorization, Indiana law prohibits the Chair of the Indiana State Board of Education and Indiana Superintendent of Public Instruction in her official capacity to employ counsel to seek declaratory and/or injunctive relief.

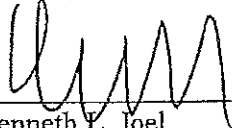
C. Conclusion

Because there is no authority for Attorneys Bernice A.N. Corely and Michael G. Moore to appear on behalf of State Plaintiff Glenda Ritz in her official capacity, the Attorney General respectfully requests that the Court strike the appearance of Bernice A.N. Corely and Michael G. Moore and the complaint filed by them.

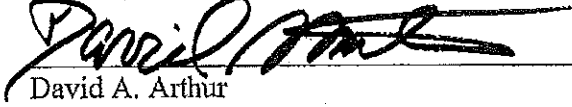
Respectfully submitted,

GREGORY F. ZOELLER
Attorney General of Indiana
Attorney No. 1958-98

By:


Kenneth L. Joel
Deputy Attorney General
Attorney No. 30271-49

By:


David A. Arthur
Deputy Attorney General
Attorney No. 2461-48

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing has been duly served upon the person(s) listed below by personal service and by United States mail, first-class postage prepaid, on

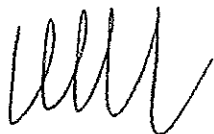
October 24, 2013:

Bernice A.N. Corley
Michael G. Moore
115 W. Washington Street
South Tower, Suite 600
Indianapolis, IN 46204
Attorneys for Plaintiff

Bernice A.N. Corley
Michael G. Moore
115 W. Washington Street
South Tower, Suite 600
Indianapolis, IN 46204
Attorneys for Plaintiff

Members of the Indiana Board of Education
Daniel Elsener
Tony Walker
David Freitas
Cari Whicker
Sarah O'brien
Andrea Neal
Brad Oliver,
B.J. Watts
Troy Albert
Gordon Hendry
Indiana Department of Education
South Tower, Suite 600
115 W. Washington Street
Indianapolis, IN 46204

George Angelone
Director of Legislative Services Agency
200 W. Washington Street, Suite 301
Indianapolis, IN 46204



Kenneth L. Joel
Deputy Attorney General

Office of the Indiana Attorney General
Indiana Government Center South, 5th Floor
302 W. Washington Street
Indianapolis, IN 46204
Telephone: (317)233-8296
Fax: (317)234-2900
E-mail: Kenneth.Joel@atg.in.gov

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 ALBERT, GORDON HENDRY, in their)
 Individual capacities as members of the)
 Indiana State Board of Education,)
 GEORGE ANGELONE, in his official)
 capacity as Director of Legislative)
 Services Agency,)

Defendants.)

FILED
 OCT 24 2013
 Clerk of Court
 Marion County, Indiana

**MOTION TO SET HEARING ON THE ATTORNEY GENERAL OF INDIANA'S
 MOTION TO STRIKE THE APPEARANCES AND COMPLAINT
FILED ON BEHALF OF THE PLAINTIFF**

Gregory F. Zoeller, Attorney General, by Kenneth L. Joel and David A. Arthur Deputies
 Attorney General, respectfully moves the Court to set a hearing on the Attorney General of
 Indiana's motion to strike and shows the Court as follows:

1. On October 22, 2013, Plaintiff, Glenda Ritz, in her official capacity as Chair of the
 Indiana State Board of Education and Indiana Superintendent of Public Instruction, sued
 the members of the Indiana Board of Education "in their individual capacities as
 members of the Indiana State Board of Education, and George Angelone in his official

capacity as Director of Legislative Services Agency, seeking declaratory and injunctive relief under Ind. Trial Rule 57, Indiana Code chs. 5-14-1.5, 34-14-1 and 34-26-1.

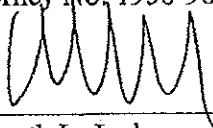
2. Attorneys Bernice A. N. Corely and Michael G. Moore filed the Complaint on behalf of Plaintiff Glenda Ritz.
3. On October 24, 2013, the Attorney General of Indiana filed a motion to strike the appearances and complaint filed on behalf of Plaintiff Glenda Ritz.

WHEREFORE, the Attorney General of Indiana urges the Court to set this case for hearing, and to grant him all other relief just and proper in the premises.

Respectfully submitted,

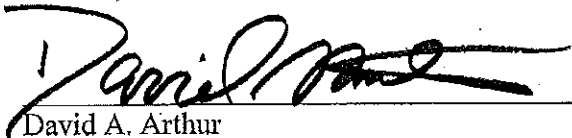
GREGORY F. ZOELLER
Attorney General of Indiana
Attorney No. 1958-98

By:



Kenneth L. Joel
Deputy Attorney General
Attorney No. 30271-49

By:



David A. Arthur
Deputy Attorney General
Attorney No. 2461-48


CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing has been duly served upon the person(s) listed below by personal service and by United States mail, first-class postage prepaid, on October 24, 2013:

Bernice A.N. Corley
Michael G. Moore
115 W. Washington Street
South Tower, Suite 600
Indianapolis, IN 46204
Attorneys for Plaintiff

Members of the Indiana Board of Education
Daniel Elsener
Tony Walker
David Freitas
Cari Whicker
Sarah O'brien
Andrea Neal
Brad Oliver,
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 Individual capacities as members of the)
 Indiana State Board of Education,)
 GEORGE ANGELONE, in his official)
 capacity as Director of Legislative)
 Services Agency,)

Defendants.)

FILED
 12 OCT 24 2013
 Clerk of Court
 MARION COUNTY, INDIANA

JOINT APPEARANCE BY ATTORNEYS IN A CIVIL CASE

1. The party on whose behalf this form is being filed is:
 Initiating _____ Responding _____ Intervening _____; and Other X

the undersigned attorney and all attorneys listed on this form now appear in this case for the following parties:

Gregory F. Zoeller

Name, address, and telephone number of party (see Question #6 below if this case involves a protection from abuse order, a workplace violence restraining order, or a no-contact order):

Name: Gregory F. Zoeller
Address: Indiana Attorney General's Office
Indiana Government Center South, 5th Floor
302 W. Washington Street
Indianapolis, IN 46204
Telephone: (317) 232-6201

2. Attorney information for service as required by Trial Rule 5(B)(2):

Name: Kenneth L. Joel Attorney No.: 30271-49
Address: OFFICE OF THE INDIANA ATTORNEY GENERAL
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, IN 46204-2770
Telephone: (317) 233-8296
Fax: (317) 232-7979
E-Mail: Kenneth.Joel@atg.in.gov

See continuation page for additional attorney information

3. This is a PL Case Type under Administrative Rule 8(B) (3). (already assigned).
4. I will accept service by fax at the above noted number: Yes _____ No X
5. This case involves support issues: Yes _____ No X (If Yes, supply social security numbers for all family members on a separately attached document filed as confidential information on light green paper. Use Form TCM-TR3.1-4.)
6. This case involves a protection from abuse order, a workplace violence restraining order, or a no-contact order: Yes _____ No X (If Yes, the initiating party must provide an address for the purpose of legal service, but that address should not be the one that exposes the whereabouts of a petitioner.) The party shall use the following address for purposes of legal service:

_____ Attorney address.
_____ Attorney General Confidentiality Program address. (Obtain by calling (800) 321-1907, or by e-mailing confidential@atg.state.in.us.)
_____ Other address provided.

Name:
Address:

7. This case involves a petition for involuntary commitment: Yes _____ No X
8. If answered Yes above, provide the following regarding the individual subject to petition for involuntary commitment:

a. Name of individual subject to petition for involuntary commitment, if it is not already provided in #1 above:

b. State of residence of person subject to petition:

c. At least one of the following pieces of identifying information:

(i) Date of Birth:

(ii) Driver's License No.:

State in which License
Issued:

Expiration Date:

(iii) State ID No.:

State in which ID Issued:

Expiration Date:

(iv) FBI No.:

(v) Indiana Department of Corrections No.:

(vi) Social Security Number is available and is being

provided in an attached confidential document. Yes _____ No _____

9. There are related cases: Yes _____ No X (If Yes, list on continuation page.)

10. Additional information required by Local Rule: _____ N/A _____

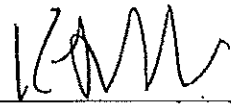
11. There are other party members: Yes _____ No X (If Yes, list on continuation page.)

12. This form has been served on all other parties and Certificate of Service is attached:
Yes X No _____


Respectfully submitted,

GREGORY F. ZOELLER
Attorney General of Indiana
Attorney No. 1958-98

By:


Kenneth L. Joel
Deputy Attorney General
Attorney No. 30271-49

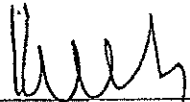
By:


David A. Arthur
Deputy Attorney General
Attorney No. 2461-48

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing has been duly served upon person(s) of record listed below, by United States mail, first-class postage prepaid, on October ____, 2013:

Bernice A.N. Corley
Michael G. Moore
115 W. Washington Street
South Tower, Suite 600
Indianapolis, IN 46204
Attorneys for Plaintiff



Kenneth L. Joel
Deputy Attorney General

OFFICE OF THE INDIANA ATTORNEY GENERAL
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, IN 46204-2770
Telephone: (317) 233-8296
Facsimile: (317) 232-7979
E-mail: Kenneth.Joel@atg.in.gov

APPEARANCE FORM - CONTINUATION PAGE

Case Number: 49C01-1310-PL-038953

First Name in Case Caption: Glenda Ritz

Continuation of Item #1 (For Attorney use only; list additional parties this attorney represents in this case):

Continuation of Item # 2 (For Attorney use only; list additional attorneys appearing for party member, as applicable): X

Name: David A. Arthur Atty. Number: 2461-48
Address: Office of the Attorney General
I.G.C.S. - 5th Floor, 302 W. Washington Street
Indianapolis, IN 46204
Phone: (317) 232-6286
FAX: (317) 232-7979
Email Address: David.Arthur@atg.in.gov

Continuation of Item # 9 (Caption and case number of related cases): N/A

Caption: _____	Case Number: _____
Caption: _____	Case Number: _____
Caption: _____	Case Number: _____
Caption: _____	Case Number: _____

Continuation of Item # 11 (For Attorney use only; other party members not represented by this attorney):

Use additional continuation forms if needed.