

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 12-11117-MLW

FRIEDRICH LU,  
**Plaintiff,**

v.

GEORGE HULME, in his individual  
capacity and in his official capacity,  
TRUSTEES OF THE BOSTON PUBLIC  
LIBRARY,  
**Defendants.**

**DEFENDANTS GEORGE HULME AND THE TRUSTEES OF THE  
BOSTON PUBLIC LIBRARY'S OPPOSITION TO PLAINTIFF'S  
MOTION TO DISQUALIFY SO CALLED COUNSEL**

The City of Boston Law Department ("Law Department") submits this Opposition to Plaintiff's Motion to Disqualify So Called Counsel. Plaintiff claims that the Law Department does not have the authority to represent either the Trustees of the Boston Public Library ("Board of Trustees") or George Hulme ("Hulme") (collectively, "Defendants"). As established by City of Boston Municipal Code Ch. 5-8, however, the Law Department is duly authorized to provide legal services to all city departments, officers and employees. The Board of Trustees is a municipal board charged with the care of the Boston Public Library ("BPL"). Mr. Hulme is an employee of the BPL. Because the Law Department may represent both of the Defendants, the Law Department respectfully requests that this Court deny Plaintiff's motion with prejudice.

## ARGUMENT

A cursory review of the City of Boston Municipal Code (“CBC”) reveals that the Law Department is authorized to represent both Defendants:

The Law Department under the Corporation Counsel among other duties, shall 1) advise any officer or employee of the City on any question of law connected with the discharge of his official duties; 2) appear as Counsel in all suits, actions, or prosecutions which may involve the rights or interests of the City; and 3) defend the officers of the City in suits against them for their official actions, or for the performance of their official duties, or when any estate, right, privilege, interest, ordinance, act, or direction of the City is brought in question. The only restriction mentioned is that no person connected with the Law Department shall [...] appear in court in any case to which the City is not a party. CBC Ch. 5-8.1.

Per CBC Ch. 5-8.1, the Law Department has a broad mandate to provide legal services to all City departments, officers and employees. Moreover, CBC Ch. 1-1, § 9 states that “the word ‘officer’ shall include officers and boards in charge of departments and the members of such boards.”

As noted above, the Law Department shall “defend the officers of the City in suits against them for their official actions, or for the performance of their official duties.” CBC Ch. 5-8.1. The Trustees are a municipal board whose sole purpose is “the general care and control of the central public library in [Boston] and of all branches thereof.” *See* 1878 Mass. Acts, Ch. 114, p. 76; *see also* CBC Ch. 11-8.1 (establishing a “Library Department” under the charge of a Board of Trustee). Thus, as a municipal board in charge of a City department, the Board of Trustees is an officer of the City of Boston that may be represented by the Law Department.

Moreover, the fact that the Board of Trustees is a municipal corporate board with legal capacity to accept bequests and own property has no bearing on the Law

Department's ability to represent it. *See Trustees of Pub. Library of City of Boston v. Sherrill*, 263 Mass. 173, 174 (1928) (affirming a bequest to the Trustees for the purchase of books and other items; the Law Department appeared on behalf of the Trustees); *see also* CBC. Ch. 11.8.2 (requiring the Board of Trustees to submit an annual, comprehensive report on the condition of the library).

Here, Plaintiff is suing the Board of Trustees as caretaker of the library because of an incident at the Copley branch. *See* Plaintiff's Complaint at ¶ 2 ("Compl. ¶ \_\_\_\_"). The Board of Trustees is a City officer whose very inclusion in Plaintiff's Complaint is related to the performance of its official duties; therefore, the Law Department has the authority to represent the Trustees.

Likewise, Mr. Hulme is employed as the Supervisor of Security, Shipping and Receiving at the BPL. *See* Compl. ¶ 9; BPL Management Staff, <http://www.bpl.org/general/management.htm> (site last visited July 12, 2012). A person employed at a "municipal agency" is a "municipal employee," and a "municipal agency" is any department of a city government or any division or board thereof or thereunder. *See* M.G.L. c. 268A, § 1. Because the Public Library is a City department, the Law Department may represent any of its employees. *See* CBC Ch. 1-1, § 9. Thus, the Law Department's representation of Mr. Hulme in this case is entirely appropriate.

### **CONCLUSION**

For the reasons discussed above, it is clear that the Law Department has the authority to represent the Defendants. Therefore, Defendants respectfully request that this Court deny Plaintiff's Motion to Disqualify with prejudice.

Respectfully submitted,

DEFENDANTS GEORGE HULME, in his  
individual capacity and in his official capacity  
and TRUSTEES OF THE BOSTON PUBLIC  
LIBRARY

William Sinnott  
Corporation Counsel

By their attorneys:

/s/Caroline O. Driscoll  
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Date: July 13, 2012

**LOCAL RULE 7.1 CERTIFICATION**

I also certify that on July 13, 2012, I filed this document through the Court's CM/ECF system and that an electronic copy will be sent via email to those identified as non-registered participants per agreement with Plaintiff.

/s/Caroline O. Driscoll  
Caroline O. Driscoll