

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Friedrich Lu, Plaintiff )  
v ) Civil Action No 12-cv-11117-MLW  
George Hulme, )  
Trustees of Boston Public Library, Defendants )

Opposition to Motion to Dismiss

The city filed a motion to dismiss ("motion") on behalf of defendants, its pre-motion consultation having been perfunctory (Exhibit). If Lu had been told of the motion's content, Lu would have dissuaded the city.

The motion 4 cited Kreimer v. Bureau of Police For the Town of Morristown, 958 F.2d 1272, 1262-63 (3rd Cir. 1992). In that case, the library settled with Kreimer for a third of its billio

Said motion 6, n. 4 alluded to Appropriate Library Usage Policy, without fleshing out with any argument. Being extraneous, the Policy must be disregarded at this stage. Stripped of the policy, the motion 7-8 ("rules") was inane.

The city has a history to file motions that fly in the face of laws.\*

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\* The same applies to the city's opposition to Lu's motion disqualify the city.

(1) It is indisputable that the city is a non-party to the lawsuit--it is not a named party and has no stake. The city has not asked to substitute for or join defendants, see Fed.R.Civ.P. 19 (required joinder), 20 (permissible joinder). Cf. id, Rule 17 (real party in interest), because it can not by law and said rules.

(2) Here is the Code in its own words, under section 5-8 Law Department of Chapter V Administration:


"5-8.1 Corporate Counsel. The [Law] Department \* \* \* shall by him or by his assistants in the Law Department appear as Counsel in all suits, actions, or prosecutions which may involve the rights or interests of the City, and defend the officers of the City in suits against them for their official actions, or for the performance of their official duties, or when when any estate, right, privilege, interest, ordinance, act, or direction of the City is brought in question; \* \* \*

"5-8.2 Prohibition. No person connected with the Law Department shall, except as herein provided, appear in court in any case to which the City is not a party.

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Lu v. Hulme et al

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Plaintiff: Friedrich Lu, pro se  
Signed:   
Date: July 20, 2012  
Email address: x2flu@yahoo.com  
Telephone number: none

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Address: Pine Street Inn, 444 Harrison Avenue, Boston, MA 02118

A copy of this document is served electronically on Ms Driscoll.

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(3) Trustees of the Public Library of Melrose v City of Melrose (1944) 316 Mass 584, highlighted in Lu's motion to disqualify, is loud and clear that Trustee of the Boston Public Library cca not be part of City of Boston. In common law, an agency can not sue another agency (in parallel or its superior) within the same branch of the government. This is true in Massachusetts, see Town of Middleborough v Middleborough Gas and Electric Dep't (1996) 422 Mass. 583, 584, n.1 ("a party may not sue itself"); distinguished in DeRoche v. Massachusetts Commission Against Discrimination (2006) 447 Mass. 1, 10-11 -- as well as federal judicial system, see Michael Herz, United States v. United States; When can the Federal government sue itself? William and Mary Law Review 32: 892, 895 ("A person cannot sue herself").

-----Exhibit

[subject:] Lu v. Hulme, Trustees of the BPL  
Tuesday, July 3, 2012 3:04 PM  
From: "Driscoll, Caroline" <Caroline.Driscoll@cityofboston.gov>  
To: "Friedrich Lu" <x2flu@yahoo.com>

Dear Mr. Lu,

Thank you for sending your Motion to Disqualify. I will respond with an opposition in due course. In the meantime, the Trustees of the BPL and Mr. Hulme are planning to file an opposition to your Motion for Temporary Restraining Order along with a Motion to Dismiss this case. Per Local Rule 7.1, I am sending you this email to notify you of our intentions and to attempt to resolve this matter.

The Trustees maintain that you are free to use the library at any time, as any other patron. Likewise, the Trustees and Mr. Hulme believe that there was no violation of your civil rights on June 13, 2012, as you have set forth in your Complaint. If you would be willing to dismiss this matter, it would be in all parties' interests to avoid further litigation.

While I suspect that such a dismissal by you is not an option at this point, I wanted to raise the issue in good faith prior to filing Defendants' Motion to Dismiss (which will be filed by this Thursday, July 5th).

Regards,

Caroline O. Driscoll  
Assistant Corporation Counsel  
City of Boston -- Law Department  
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Boston, MA 02201  
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