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CENTRE COUNTY  
COMMERCIAL, PA

IN THE COURT OF COMMON PLEAS OF  
CENTRE COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

GRAHAM B. SPANIER

Plaintiff,

v.

LOUIS J. FREEH, and  
FREEH SPORKIN & SULLIVAN, LLP,

Defendants.

) Docket No. 2013-2707  
)  
) Type of Case: Defamation  
)  
) Type of Pleading: Memorandum in  
) Opposition to Defendants' Motion for  
) Assignment of an Out of County Judge  
)  
) Filed on behalf of: Plaintiff  
)  
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GRAHAM B. SPANIER,

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**PLAINTIFF GRAHAM B. SPANIER’S MEMORANDUM OF LAW IN  
OPPOSITION TO DEFENDANTS’ MOTION FOR  
APPOINTMENT OF AN OUT OF COUNTY JUDGE**

Although styled a “Motion for Appointment Of An Out of County Judge” pursuant to Pennsylvania Rule of Judicial Administration 701, Defendants’ Motion is – in reality – a wholly unsupported request to prompt or compel the recusal of Judge Jonathan Grine, who has presided over this case since its inception in July

2013. A proper request under Rule 701 arises only where “additional judicial assistance [is] necessary for the prompt and proper disposition of court business.” Pa. R. Jud. Admin. 701(C)(1). Defendants have made no request or showing that Judge Grine has recused himself or should now be recused, or that outside judicial assistance is otherwise required. In reality, Defendants are not claiming a need for *additional* judicial assistance (as the rule provides), but rather are improperly seeking *different* judicial assistance by attempting to induce this Court to unnecessarily remove Judge Grine and replace him with Defendants’ own handpicked judge.

Defendants’ sole argument is that out of county judges have been appointed in other cases related to the crimes of Jerry Sandusky. But, as Defendants themselves acknowledge, appointments were necessary in those cases because all presiding judges in Centre County had already recused *themselves* from hearing them. Here, Judge Grine has presided over this action for nearly two years without any party voicing concern about his impartiality or fitness. Judge Grine has issued a number of substantive rulings, has held multiple hearings, is familiar with the subject matter of the case, and has not indicated any plans to recuse himself. Importantly, Defendants’ Motion does not identify any conflict — real or perceived — that would prevent Judge Grine from presiding over this matter.

Dr. Spanier has faith in Judge Grine's ability to preside fairly and impartially over this case and is not aware of any conflict or other issue that would disqualify Judge Grine from doing so under the relevant Pennsylvania rules. Accordingly, there is simply no need to seek the appointment of a judge from outside of Centre County. Defendants' Motion must be denied.

### **COUNTER-STATEMENT OF THE QUESTION INVOLVED**

Should the President Judge request appointment of an out-of-county judge to preside over this matter, where the case is currently assigned to Judge Jonathan Grine, where Judge Grine has presided over the action with full knowledge of the subject matter and without objection of any party since July 2013, where Judge Grine is not disqualified, and where Defendants have made no showing that Judge Grine must or should recuse himself?

*Suggested response: No.*

### **ARGUMENT**

#### **I. There Is No Need For Outside Judicial Assistance.**

Defendants' Motion is brought pursuant to Pennsylvania Rule of Judicial Administration 701(C)(1), which permits the President Judge to make a formal request to the Administrative Office for the assignment of an additional judge, on a temporary basis, "[w]henver a president judge deems additional judicial assistance necessary for the prompt and proper disposition of court business." (Apr. 10, 2015 Mot. for Assignment of an Out of County Judge ("Mot.") ¶ 5); Pa.

R. Jud. Admin. 701(C)(1). Defendants point to the fact that such appointments have been made in certain other cases such as the Sandusky criminal trial and the civil suit filed by former assistant Penn State football coach Mike McQueary against Penn State. (Mot. ¶ 6.) But Defendants' Motion ignores the fact that a qualified judge of this Court has already been assigned to this case, has already presided over the case for two years, has already issued substantive rulings, and has scheduled further hearings.<sup>1</sup>

Defendants acknowledge that in prior cases where a request for appointment of an out-of-county judge was made, it was necessitated by the fact that *all judges* of the Centre County Court of Common Pleas had recused *themselves*. (Apr. 10, 2015 Mem. In Support of Mot. for Assignment of an Out of County Judge ("Mem.") at 6-10.) For example, during the media firestorm that followed Sandusky's indictment, all Centre County judges recused themselves from hearing his criminal case in November 2011. (*Id.* at 6.) The recusals in The Second Mile case occurred in June 2012, the recusals in the McQueary case occurred in October 2012, and the recusals in the Paterno civil case occurred in May 2013. (*Id.* at 8-9.) But today, years removed from the Sandusky indictment and the release of the

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<sup>1</sup> Judge Grine held a pretrial conference to discuss the status of the case on March 18, 2015 and has scheduled a follow-up conference with the parties on May 13, 2015. Several substantive motions are now pending before Judge Grine, including Plaintiff's Motion For Leave To Join Additional Parties and Plaintiff's Motion to Modify The Stay.

Freeh Report, there is simply no reason for an across-the-board disqualification of all Centre County judges — and Defendants do not identify any. Because a judge of this Court is presiding over this case and has since its inception, there is no need for “additional judicial assistance,” *see* Pa. R. Jud. Admin. 701(C)(1), and therefore there is no need to seek appointment of an out-of-county judge.

Moreover, Defendants’ Motion seems to have been premised on their mistaken view that a ready-made replacement Judge existed in Dauphin County President Judge Todd Hoover, who is presiding over a related criminal proceeding. (Mem. at 14-16.) Defendants argued that appointing Judge Hoover would promote judicial efficiency because he was already familiar with some of the issues likely to arise in this civil action.<sup>2</sup> (*Id.*) As noted in Defendants’ April 15, 2015 Supplemental Submission, however, the Dauphin County court has recently announced that Judge Hoover is taking a medical leave of absence and will not be available to hear cases for the foreseeable future. Defendants have therefore withdrawn their request that Judge Hoover be assigned to hear this case.<sup>3</sup>

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<sup>2</sup> Notably, Defendants did not request that Judge Hoover be assigned to this case in 2013 and early 2014, when Judge Grine presided over several motions addressing the relationship between this case and the criminal proceedings.

<sup>3</sup> Because Judge Hoover is unavailable and Defendants have withdrawn their request to have the case reassigned to Judge Hoover, it is unnecessary for this Opposition to address Plaintiff’s specific objections to Defendants’ request to select their own preferred Judge for this proceeding – something a former federal judge should appreciate is antithetical to an impartial and neutral judicial process.

As Defendants' Motion and Supplemental Submission implicitly acknowledge, the judge most familiar with the issues in this case and who is best equipped to deal with those issues going forward is Judge Grine, who has presided over this matter for nearly two years.

**II. Judge Grine Is Not Disqualified Under Pennsylvania Rules And There Is No Basis For His Recusal.**

Conspicuously absent from Defendants' Motion and Memorandum is any suggestion, let alone argument, that Judge Grine must or should recuse himself from presiding over this case. Under Pennsylvania Law, "[a] party that seeks recusal of a judge bears the burden 'to produce evidence establishing bias, prejudice or unfairness which raises a substantial doubt as to the jurist's ability to preside impartially.'" *Commonwealth v. Hutchinson*, 611 Pa. 280, 319 (2011). Defendants do not claim that Judge Grine is biased, prejudiced, or in any way unable to preside impartially over this case. Since there is no cause for Judge Grine's recusal, there is no reason for appointment an out-of-county judge.

Defendants argue only that other Centre County judges have recused themselves from certain other cases broadly arising out of Jerry Sandusky's crimes. (*See* Mem. at 11-13.) They make no mention whatsoever of any actual or perceived conflict specific to Judge Grine that would require his recusal in this case. For this reason alone, Defendants have not met their burden and their Motion should be denied. *See Hutchinson*, 611 Pa. at 319.



Pennsylvania's Code of Judicial Conduct sets forth a specific and detailed list of the circumstances that require a judge to disqualify himself in a proceeding, none of which are remotely applicable here. *See* 207 Pa. Code § 2.11. Defendants do not claim that Judge Grine has a personal bias or prejudice, that he has personal knowledge of the facts alleged in the proposed complaint, that he has a familial relation to any party or attorney in this case, that he has an economic interest in the subject matter of the controversy, that he has received a large campaign contribution from any party, or that he has made any public statements suggesting he favors one party over another. *See id.*

In fact, the only potential "relationship" with a party that could even remotely be argued here is that Judge Grine is an alumnus of Pennsylvania State University, one of the defendants that Dr. Spanier seeks to join in this case. But Judge Grine and Defendants have known the close connection of this case to Penn State for some time.<sup>4</sup> And even more fundamentally, the fact that Judge Grine

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<sup>4</sup>Defendants' Memorandum appears to argue that their request for a new judge was prompted by Plaintiff's filing of a proposed complaint and a motion seeking to join Penn State and another Freeh entity as defendants. But the fact that this case arises out of the Freeh Report, and Freeh's retention by Penn State, is hardly a revelation to the Court or to Defendants. Indeed, Defendants' first substantive filing in this Court — approximately a year-and-a-half ago — contains a statement of facts that begins with the heading "Judge Freeh And His Law Firm Are Commissioned By PSU To Complete An Independent Investigation And Issue A Report," and explains that Dr. Spanier's defamation claims arise in part out of the report Freeh issued as a result of this retention. (*See* Nov. 12, 2013 Opp'n of Defs. to Mot. of Pl. to Stay Civil Proceedings at 4-7.)

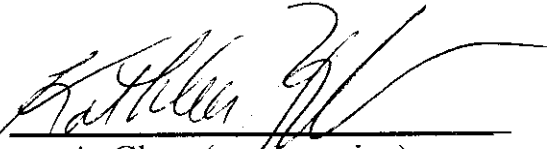
Grine graduated from Penn State is not the sort of familial or economic relationship that requires recusal under Rule 2.11. Finally, even if an argument could somehow be made that Judge Grine is somehow biased toward his alma mater (an argument not presented in Defendants' Motion), any such bias would presumably be in favor of Penn State, and would not be directed against Defendants or in favor of Dr. Spanier. Even under those circumstances, it would only be Dr. Spanier – and not Defendants – who would have standing to request assignment to a different judge.

To be clear, Dr. Spanier has faith in Judge Grine's ability to preside over this case fairly and impartially – even with Penn State as a party. To the extent Defendants are implicitly suggesting otherwise, they have not met their burden of producing evidence of bias or prejudice, and therefore there is simply no reason for Judge Grine's recusal.

### CONCLUSION

For the foregoing reasons, Dr. Spanier respectfully requests that the Court deny Defendants' Motion for Appointment of an Out of County Judge.

Dated: April 30, 2015

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**CERTIFICATE OF SERVICE**

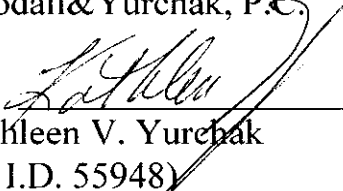
I hereby certify that a true and correct copy of the foregoing was served on the below counsel of record on April 30, 2015 via email and first class mail.

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