

HONORABLE RICHARD EADIE

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

SEATTLE CITIZENS AGAINST THE TUNNEL
and ELIZABETH CAMPBELL,

NO. 09-2-36276-9SEA

Plaintiffs/Petitioners,

DEFENDANTS' RESPONSE TO
PLAINTIFFS' MOTION FOR
CONTINUANCE

v.

WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION; PAULA HAMMOND, IN
HER OFFICIAL CAPACITY AS SECRETARY
OF THE WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION,

Defendants/Respondents.

ELIZABETH A. CAMPBELL,

(CONSOLIDATED WITH
NO. 09-2-40939-1SEA)

Plaintiff/Petitioner,

v.

CITY OF SEATTLE, a municipal corporation,

Defendant/Respondent.

I. RELIEF REQUESTED

Defendants Washington State Department of Transportation and Paula Hammond (collectively, "WSDOT") and the City of Seattle ("City"), request that the Court deny Plaintiffs' motion for continuance. Plaintiffs, as the moving party, can re-note the show cause hearing without the consent of WSDOT, and WSDOT has no objection to the re-noting of that hearing.

1 **II. STATEMENT OF FACTS**

2 On October 6, 2009, Plaintiffs filed this lawsuit against WSDOT. (King County
3 Superior Court Cause No. 09-2-36276-9SEA.) At that time, Plaintiffs were represented by
4 attorney David Bricklin. On November 6, 2009, Ms. Campbell filed a separate lawsuit
5 against the City of Seattle. (King County Superior Court Cause No. 09-2-40939-1SEA.)
6 Both lawsuits alleged violations of the State Environmental Protection Act (SEPA) in relation
7 to the Alaskan Way Viaduct Central Waterfront Replacement Project. WSDOT filed a
8 motion to intervene in the case filed against the City and a motion to consolidate the two
9 cases. A hearing on those motions was noted for December 29, 2009.

10 WSDOT's counsel discussed scheduling the hearing on a motion to dismiss this matter
11 on October 26, 2009, intending to note that motion for hearing on December 4, 2009.
12 Because no hearing times were available until January 8, 2010, the motion was noted for that
13 date. On November 25, 2009 (prior to the consolidation of the two cases), WSDOT filed a
14 motion to dismiss the case against it pursuant to CR 12(b)(1). Counsel for WSDOT and the
15 Plaintiffs agreed on a briefing schedule under which the Plaintiffs' response was due on
16 December 28, 2009. Declaration of Deborah L. Cade (Cade Decl.), ¶¶ 2-3.

17 On December 22, 2009, Plaintiffs fired Mr. Bricklin. Mr. Bricklin filed a notice of
18 intent to withdraw on December 23, 2009, which was effective on January 8, 2010—the same
19 day as the hearing on WSDOT's motion to dismiss. To give Mr. Bricklin adequate time to
20 withdraw and to provide the case file to Plaintiffs, WSDOT re-noted the hearing on the
21 motions to intervene and consolidate for January 19, 2010,¹ and re-noted the hearing on the
22 motion to dismiss for March 12, 2010. Cade Decl., ¶¶ 5-6.

23 On or about February 12, 2010 (after the two cases were consolidated), WSDOT and
24 the City filed an amended motion to dismiss (hereinafter "Defendants' motion to dismiss").

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26 ¹ The motions to intervene and consolidate were granted on January 26, 2010.

1 The amended motion included legal arguments to support the position that the City had not
2 taken a final action as required for SEPA review. On or about February 23, 2010,
3 Ms. Campbell filed a motion to continue the hearing on Defendants' motion to dismiss,
4 claiming that she needed more time to prepare and respond. Defendants filed a response
5 opposing the request for a continuance on March 2, 2010. On March 5, 2010, the Court
6 denied Ms. Campbell's request to continue the hearing, but ordered that it would discuss the
7 need for additional response time at the hearing on March 12, 2010. At the hearing, the Court
8 entered an order continuing the hearing on Defendants' motion to dismiss to April 30, 2010.
9 On March 26, 2010, Ms. Campbell filed a response to Defendants' motion to dismiss.

10 On March 29, 2010, Ms. Campbell filed a motion for issuance of subpoenas duces
11 tecum. WSDOT filed a response on April 5, 2010. The Court entered an order denying the
12 motion on April 8, 2010.

13 On April 6, 2010, Ms. Campbell filed a Motion for an Order to Show Cause, alleging
14 WSDOT was not complying with the Public Records Act. WSDOT filed a response on
15 April 14, 2010. On April 21, 2010, the Court granted Ms. Campbell's motion and scheduled a
16 show cause hearing for April 30, 2010, at 1:30 p.m., after the hearing on Defendants' motion
17 to dismiss.

18 On April 12, 2010, Plaintiffs hired attorney Jill Smith. Ms. Smith entered her
19 appearance on April 14, 2010. Ms. Smith did not contact the attorneys for Defendants prior to
20 agreeing to represent Plaintiffs to find out if Defendants would agree to a continuance.
21 Ms. Smith was aware at that time that a hearing was scheduled on Defendants' motion to
22 dismiss. It was made clear to Ms. Smith right after she entered her appearance that the
23 hearing on Defendants' motion to dismiss had already been continued twice and that
24 Defendants would not agree to postpone the hearing for a third time. Two weeks after being
25 hired by Plaintiffs, and four days before the hearing, Plaintiffs filed a motion requesting a
26

1 continuance and a motion to shorten time. No note for hearing was served on the attorneys
2 for Defendants. Cade Decl., ¶ 12.

3 III. STATEMENT OF ISSUES

4 1. Have Plaintiffs shown good cause for a continuance when the motion to
5 dismiss has been pending for five (5) months and the hearing on that motion has already been
6 continued twice?

7 2. Have Plaintiffs shown good cause for a continuance of the show cause
8 hearing?

9 IV. EVIDENCE RELIED UPON

10 In addition to the Court files on the case, WSDOT offers the following evidence to the
11 Court: Declaration of Deborah L. Cade.

12 V. ARGUMENT/AUTHORITY

13 Plaintiffs' motion to continue the hearing on Defendants' motion to dismiss should be
14 denied. Plaintiffs' sole justification for requesting a continuance is the fact that their current
15 attorney, Jill Smith, was hired to represent them on April 12, 2010. Plaintiffs have neither
16 alleged nor shown good cause for a continuance.

17 The withdrawal or discharge of an attorney in a civil case, and the hiring of a new one,
18 does not give the client of that attorney an absolute right to a continuance. *Jankelson v. Cisel*,
19 3 Wn. App. 139, 141, 473 P.2d 202 (1970). The decision whether to grant or deny a continuance
20 in a particular situation rests in the sound discretion of the trial court. The ruling of the trial court
21 in the exercise of its discretion will not be disturbed on appeal absent a manifest abuse of
22 discretion. *Id.*, 3 Wn. App. at 141-142.

23 This Court should find that Plaintiffs have failed to show good cause for a continuance.
24 There are several justifications for such a conclusion. First, Mr. Bricklin's notice of intent to
25 withdraw was filed December 23, 2009, and was effective January 8, 2010. Although Plaintiffs
26 had ample time to obtain substitute counsel, they did not do so until April 12, 2010. Plaintiffs

1 should not be allowed to obtain a continuance when their own lack of diligence is the primary
2 cause of the circumstances under which the request is made. Second, the continuance requested
3 is Plaintiffs' second request for a continuance. The motion to dismiss was previously set to be
4 heard on January 8, 2010. However, that date was continued to March 12, 2010, to facilitate the
5 withdrawal of Plaintiffs' prior attorney. The hearing was continued for a second time at
6 Ms. Campbell's request to give her additional time to prepare and respond to the motion. Third,
7 this case was filed by Plaintiffs more than six months ago. As the parties bringing this lawsuit,
8 they are fully aware of the issues presented by this case. It is not unreasonable to expect the
9 Plaintiffs in a civil action to expect and be prepared to respond to a motion to dismiss on a purely
10 legal issue, especially when such a motion has been pending for five months. Any additional
11 delay constitutes a waste of judicial resources and is unfair to WSDOT and the City.

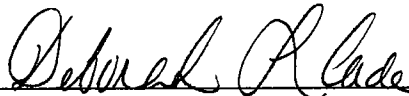
12 Based on the foregoing, Defendants respectfully request that the Court deny Plaintiffs'
13 motion for a continuance. Since the show cause hearing is based on a motion filed by Plaintiffs,
14 WSDOT has no objection to the continuance of that hearing.

15 VI. CONCLUSION

16 The withdrawal or discharge of an attorney in a civil case, and the hiring of a new one,
17 does not give the client of that attorney an absolute right to a continuance. Plaintiff has failed to
18 show good cause for the continuance requested. Accordingly, Plaintiffs' motion to continue the
19 hearing on Defendants' motion to dismiss should be denied.

20 DATED this 27th day of April, 2010.

21 ROBERT M. MCKENNA
22 Attorney General

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24 _____
25 DEBORAH L. CADE, WSBA #18329
26 AMANDA G. PHILY, WSBA #36776
Assistant Attorneys General
Attorneys for Defendants WSDOT and City of Seattle