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Plaintiff's Brief in Response to Defendant's Motion to Reassign to Docket of Judge Kathleen Sutula

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Attorney for Sheppard Estate

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FILED

1996 NOV 22 P 1:22

IN THE COURT OF COMMON PLEAS

GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY

CUYAHOGA COUNTY, OHIO

ALAN J. DAVIS, Special Administrator)
of the Estate of SAMUEL H.)
SHEPPARD)

Plaintiff)

-vs-)

STATE OF OHIO)

Defendant)

CASE NO. 96-312322-CV

JUDGE RONALD SUSTER

**PLAINTIFF'S BRIEF IN RESPONSE
TO DEFENDANT'S MOTION TO
REASSIGN TO DOCKET OF
KATHLEEN SUTULA**

The Defendant, State of Ohio, has objected to Judge Ronald Suster presiding over this case, despite the fact that Judge Suster has presided over this case, albeit with a different case number, for almost a year. When the same action was refiled on July 24, 1996 (in order to satisfy the civil docket requirements), the Presiding and Administrative Judge James J. Sweeney (as opposed to the Clerk of Court) ordered that the case be reassigned to Judge Suster, notwithstanding the random draw of Judge Sutula pursuant to C. P. Loc. R. 15(A).

The basis for Judge Sweeney's decision to transfer this case to Judge Suster's docket was not necessarily because the civil case is related to the criminal case, but to insure the proper administration of justice. Judge Suster has been intimately involved in this case since its inception - conducting hearings, conferences with counsel, considering legal matters, and issuing various discovery orders. To change judges in

an on-going complex proceeding makes no sense and would, at minimum, set back the orderly progress of this case.

Besides, the Administrative Judge has the authority to order such assignment.

According to C. P. Loc. R. 2(c):

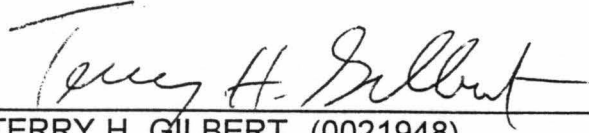
The administrative judge shall be the presiding officer of his division and shall have full responsibility for and control over the administration, docket and calendar of the division he serves. He shall cause cases to be assigned to the Judges within his division . . .

When the first Petition was filed under the original Sheppard criminal case number, it was incumbent upon Judge Sweeney to select a Judge to preside over the proceeding since the Sheppard criminal case was too old and it was unrealistic to determine which Judge should succeed the original trial judge. For whatever reason, Judge Sweeney determined, within his discretion, that the case should be assigned to Judge Suster. The fact that the exact same action was refiled as a civil matter should not change the value of maintaining the continuity of the assignment.

Moreover, the case cited by Defendant, Milton Cotton v. State of Ohio, Eighth Dist., Case No. 67403, April 6, 1995, is not helpful. All that case states is that there is no authority to transfer the wrongful imprisonment action back to the original criminal trial judge. It says nothing about limiting the authority of an administrative judge to make, under appropriate and unique circumstances as here, proper assignments of judges.

Accordingly, the State's objections should be rejected and the Motion to Reassign be overruled.

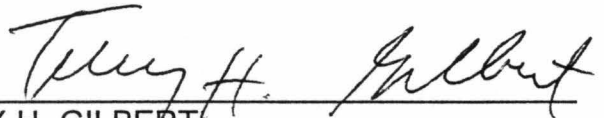
Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing Plaintiff's Brief in Response to Defendant's Motion to Reassign to Docket of Kathleen Sutula has been hand-delivered, this 22 day of NOV, 1996, to Patrick J. Murphy, Esq., Assistant Cuyahoga County Prosecutor, at his office, Justice Center, 1200 Ontario Street, Cleveland, Ohio 44113.



TERRY H. GILBERT
Attorney for Plaintiff, Special Administrator
of the Estate of Samuel H. Sheppard