

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LEGAL SERVICES CORPORATION, a)
corporation, 733 15th Street,)
N.W., Washington, D.C. 20005,)
(202) 272-4040, F. WM.)
McCALPIN, 215 North Berry)
Road, Glendale, Missouri)
63122, (314) 962-6555,)
MICHAEL KANTOR, 333 Lombard)
Avenue, Pacific Palisades,)
California 90072, (213) 459-)
5765, ROBERT J. KUTAK, 4903)
California Street, Omaha,)
Nebraska 68132, (402) 553-1275,)
REVIUS O. ORTIQUE, JR., 4516)
Annette Street, New Orleans,)
Louisiana 70122, (504) 288-1221,)
HOWARD SACKS, 51 South Highland,)
West Hartford, Connecticut 06119,)
(203) 236-1791, RAMONA SHUMP,)
1105-A Glendale, Topeka, Kansas)
66606, (913) 272-9208, STEVEN)
L. ENGELBERG, 4813 Grantham)
Avenue, Chevy Chase, Maryland)
20015, (301) 652-0993, CECILIA)
ESQUER, 1720 East Palmcroft,)
Tempe, Arizona 85282, (602))
968-2209, HILLARY RODHAM, 816)
Midland, Little Rock, Arkansas)
72205, (501) 661-1298, and)
RICHARD TRUDELL, 375 Jayne)
#202, Oakland, California)
94610, (415) 763-0815,)
Plaintiffs,)
v.)
HOWARD H. DANA, JR., 670 Shore)
Road, Cape Elizabeth, Maine 04107,)
(207) 767-2678, HAROLD R. DeMOSS,)
JR., 6231 Valley Forge, Houston,)
Texas 77057, (713) 781-6754,)
WILLIAM F. HARVEY, 8949 Sassafras)
Court, Indianapolis, Indiana)
46260, (317) 872-4539, CLARENCE)
V. McKEE, 1776 K Street, N.W.,)
Washington, D.C. 20006, (202))
466-4880, WILLIAM J. OLSON, 3814)
Bent Branch Road, Falls Church,)
Virginia 22041, (703) 642-8485,)
GEORGE E. PARAS, 1681 Del Dayo)
Drive, Carmichael, California)
95608, (916) 443-2011, MARC)
SANDSTROM, 6930 Via Estrada,)
LaJolla, California 92037, (714))

82- 0542

JOHNSON, J.

COMPLAINT
(FOR A DECLARATORY
JUDGMENT AND INJUNCTIVE
RELIEF)

459-7967, DAVID E. SATTERFIELD,)
III, 1600 S. Eads Street,)
Arlington, Virginia 22202, (703))
521-7523, ANNIE L. SLAUGHTER,)
5012 Vernon Avenue, St. Louis,)
Missouri 63113, (314) 361-8058,)
and ROBERT SHERWOOD STUBBS, II,)
Morse Elm Loop, Canton,)
Georgia 30114, (404) 479-2809,)
Defendants.)

Introduction

1. This is an action to protect the Legal Services Corporation from an unlawful assertion of control by persons purporting to be Directors under so-called recess appointments who have not been confirmed by the Senate as required by the statute creating the Corporation. The case arises under § 1004 of the Legal Services Corporation Act, 42 U.S.C. § 2996c. A declaratory judgment is sought pursuant to 28 U.S.C. § 2201.

Jurisdiction

2. This court has jurisdiction pursuant to 28 U.S.C. § 1331.

Venue

3. Venue lies in the United States District Court for the District of Columbia pursuant to 28 U.S.C. § 1391(b) because the claim arose in this District.

The Parties

4. Plaintiff Legal Services Corporation ("Corporation") is a corporation established in the District of Columbia as a private nonmembership, nonprofit corporation by Act of Congress, the Legal Services Corporation Act of 1974, Public Law 93-355,

88 Stat. 378, 42 U.S.C. 2996, et seq. It was created to satisfy a Congressionally declared need "to provide equal access to the system of justice in our Nation for individuals who seek redress of grievances." 42 U.S.C. § 2996(3).

5. As required by the statute, the Corporation maintains its principal office in the District of Columbia. 42 U.S.C. § 2996b.

6. Plaintiffs F. Wm. McCalpin, Michael Kantor, Robert J. Kutak, Revius O. Ortique, Jr., Howard Sacks, Ramona Shump, Steven L. Engelberg, Cecilia Esquer, Hillary Rodham and Richard Trudell are respectively Chairman and members of the Board of the Corporation. They were appointed by the President and, as required by the statute, 42 U.S.C. § 2996c(a), confirmed by the Senate.

7. Although the three-year terms of the individual plaintiffs have expired, they continue to serve until their successors are qualified. 42 U.S.C. § 2996c(b).

8. Defendants Howard H. Dana, Jr., Harold R. DeMoss, Jr., William F. Harvey, Clarence V. McKee, William J. Olson, George E. Paras, Marc Sandstrom, David E. Satterfield, III, Annie L. Slaughter and Robert Sherwood Stubbs, II are persons who were purportedly appointed to the Board of the Corporation by the President, by documents such as that attached as Exhibit A, on December 30, 1981 and January 22, 1982, but who have not been confirmed by the Senate.

9. Defendants are nonetheless asserting control over the Corporation.

10. The individual plaintiffs are the ten directors purportedly replaced by defendants and ten of the eleven members of what they believe to be the lawfully constituted Board of the Corporation. They bring this action in their own names as

directors and in the name of the Corporation to protect the Corporation and, in all events, to obtain a needed judicial determination of the controversy presented herein.

11. The Corporation is the successor to the Legal Services Program of the Office of Economic Opportunity, an agency formerly within the executive branch of government.

Claim for Relief

12. The statute establishing the Corporation is based on a specific finding that "to preserve its strength, the legal services program must be kept free from the influence of or use by it of political pressures" 42 U.S.C. § 2996(5).

13. To accomplish this purpose, the statute requires, inter alia, that members of the Board be confirmed by the Senate. 42 U.S.C. § 2996c(a).

14. The legislative history of this provision makes clear that the Senate confirmation process is a critical safeguard against possible political dominance of the legal services program by the executive branch of government, unchecked by Congress.

15. Although papers purportedly appointing defendants to the Board of the Corporation were issued by the White House in Washington, D.C., defendants have not been confirmed by the Senate.

16. An actual controversy exists between plaintiffs and defendants as to whether defendants may exercise the powers of the Board of Directors of the Corporation without being confirmed by the Senate.

17. Control of the Corporation by directors who have not been confirmed by the Senate deprives the Corporation of the statutorily-mandated safeguard of its independence from the executive branch.

18. Defendants' usurpation of the offices of the individual directors of the Corporation without Senate confirmation illegally deprives plaintiffs of their office, interferes with their performance of their fiduciary duties to the Corporation and subjects plaintiffs to potential personal liability.

19. The individual plaintiffs have attempted to cooperate with defendants so as to permit defendants to be nominated to and confirmed by the Senate prior to exercising control over the Corporation. Such attempts included the letter from plaintiff McCalpin to defendant Olson attached hereto as Exhibit B.

20. As suggested in Exhibit B, a majority of the Board chaired by plaintiff McCalpin has agreed to postpone the regularly scheduled meeting of March 5, 1982 to March 30, 1982 at 9:00 A.M. at the principal office of the Corporation.

21. Defendants are nonetheless purporting to act as the Board of the Corporation and are taking and threatening to take action that, unless restrained, will irreparably injure plaintiffs. Among other things:

- a. Defendants Olson, Dana, Sandstrom, Harvey, Paras and Stubbs conducted a purported meeting of the Board of the Corporation in the District of Columbia by telephone on December 31, 1981 at which time, as reflected in Exhibit C, they directed that no action be taken to fund grants previously made by the Corporation in the ordinary course of business before the present controversy arose; and

b. Defendant Olson has directed the publication of a notice in the Federal Register, a copy of which is attached hereto as Exhibit D, that a meeting of the Board of the Corporation will take place in Washington on March 4, 1982, at which time defendants propose, among other things, to designate a new Acting President of the Corporation to succeed the current President whose term expires March 31, 1982 and to take other extensive action significantly affecting the Corporation's business. As reflected in the notice, defendants further propose to exercise power over the contents of the Corporation's Annual Report for the fiscal year ending September 30, 1981, long before defendants' purported appointments.

22. Unless restrained prior to March 4, 1982, the aforesaid conduct of defendants will irreparably injure plaintiffs.

23. Plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs respectfully pray that the

Court:

a. Enter a declaratory judgment declaring that defendants have no right to exercise or purport to exercise the powers of director of the Corporation until such time as they are confirmed by the Senate as required by the statute; and

b. Temporarily, preliminarily and permanently enjoin the defendants from exercising or purporting to exercise the powers of directors of the Corporation until such time as they have been confirmed by the Senate as required by the statute; and

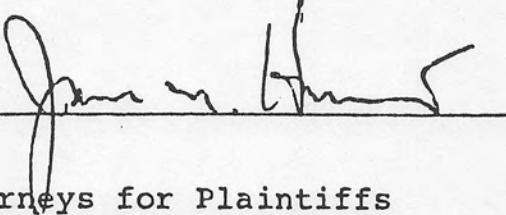
- c. Temporarily, preliminarily and permanently enjoin the defendants from holding or purporting to hold a meeting of the Board of Directors of the Corporation on March 4 or 5, 1982; and
- d. Grant such other relief as may be just and proper.

Respectfully submitted,

Joseph M. Hassett
David S. Tatel
Jean S. Moore
Stephen A. Goldberg
John C. Keeney, Jr.
Carol A. Melton

HOGAN & HARTSON
815 Connecticut Avenue, N.W.
Washington, D.C. 20006
(202) 331-4500

By _____


Attorneys for Plaintiffs

VERIFICATION

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

F. WM. McCALPIN, being duly sworn, deposes and says that he is an attorney and member of the bar of the Supreme Courts of Missouri and Illinois and of the firm of Lewis, Rice, Tucker, Allen and Chubb; that he is a plaintiff herein; that he has read the foregoing Complaint and knows the contents thereof and that the same are true of his own knowledge except as to matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true.

F. Wm. McCalpin
F. Wm. McCalpin

Subscribed and sworn to
before me this 24th day
of February, 1982.

Virginia E. Fischer
Notary Public

My commission expires:

VIRGINIA E. FISCHER
NOTARY PUBLIC STATE OF MISSOURI
ST. LOUIS CO.
MY COMMISSION EXPIRES DEC 12 1984

I hereby appoint Howard H. Dana, Jr., of Maine,
to be a Member of the Board of Directors of the Legal
Services Corporation, until the end of the next session
of the Senate of the United States and no longer, subject
to the conditions prescribed by law.

RONALD REAGAN

THE WHITE HOUSE,
December 30, 1981.

COMPLAINT EXHIBIT A

TO MEMBERS OF THE BOARD OF DIRECTORS
LEGAL SERVICES CORPORATION

Pursuant to requests received from five members of the Board of Directors, the Board will convene a special meeting, as provided for in the By-laws of the Corporation, on December 31, 1981. The meeting will be conducted at the Federal Bar Building, William Howard Taft Room, 1815 H Street, N.W., Washington, D.C. by teleconference at 3:00 p.m. Eastern Standard Time. The five members requesting the meeting specifically requested the deviation from the standard seven day notice provision.

The purpose of the meeting is to elect a chairman of the Board and to provide for review of the 1982 grant and contract procedures.

William J. Olson
Acting Chairman

RESOLUTION
BOARD OF DIRECTORS
LEGAL SERVICES CORPORATION
December 31, 1981

The majority of the membership of the Board of Directors of the Legal Services Corporation having been recently appointed by the President; and

The reduced level of funding provided by the Congress necessitating a review of the grant and contract processes of the Corporation by the Board of Directors;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the Legal Services Corporation that the Board undertake a review of the criteria by which grants and contracts are funded or refunded by the Corporation, and

BE IT FURTHER RESOLVED, that during the period of the review neither the President of the Corporation nor any officer or employee thereof shall take formal action to fund or refund a grant or contract, and

BE IT FURTHER RESOLVED, that the President is instructed to advise grantees and contractors of this action and to assure such grantees and contractors that their grants and contracts have neither been suspended nor terminated and that they may continue to expend from total unexpended balances of funds an amount equal to 6% of the amount authorized in their 1981 funding during the month of January 1982. Any grantee or contractor whose unexpended balance is not adequate to meet this level may apply to the President of the Corporation for specific interim funding to meet the 6% level which the President may authorize pending adoption of criteria for the 1982 funding.



LEGAL SERVICES CORPORATION

611 Olive Street
Suite 1400
St. Louis, Missouri 63101
314/231-5833

February 4, 1982

William J. Olson, Esq.
Smiley, Olson & Gilman
1819 H Street, N.W.
Washington, D. C. 20006

Dear Bill:

I tried to reach you by telephone yesterday but was unable to make contact. Yesterday was the day which brought up March 5 on my 30 day tickler file. March 5 is, as you know, the next regularly scheduled meeting of the Board of the Legal Services Corporation. I think we need to discuss how to approach that situation.

Up until now I have rested with relative comfort in the hope that President Reagan's appointees to the Board would be confirmed by that date and that all of the problems would disappear. It now appears that confirmations are most unlikely by that date and I have heard rumors that they may be delayed for months.

I am sure that you are aware of the widespread discussion and some research concerning the question of legality of the recess appointments. Indeed, Dan Bradley tells me that he has furnished you with a copy of the Steptoe & Johnson opinion on the matter and you no doubt also have seen the recent opinion of the Corporation general counsel on the same subject. I have another opinion from Hogan & Hartson which is consistent with those other two.

I am familiar with the earlier opinion of the Corporation general counsel leaning in the opposite direction and am aware that there are memoranda prepared by the Department of Justice and the Congressional Research Service of the Library of Congress

William J. Olson, Esq.
February 4, 1982
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in 1978. The one sure conclusion from all of this is that there is a serious problem.

I am and have been most anxious to avoid any unnecessary confrontation and the unseemly spectacle of a bruising fight over the management of the Corporation which could only disserve all concerned. On the other hand, I am concerned that our Board took an oath to uphold the law, has a fiduciary obligation to the Corporation and its constituents and may have, as I am told, personal liability if we fail to honor our obligations.

It occurs to me that there are various ways to avoid these problems. Perhaps we could all agree that the meeting on March 5 be postponed until the new appointees are confirmed. If it becomes necessary to transact Corporation business at the Board level maybe the two Boards could agree on such action in advance and simultaneously take the necessary action so that there would be no conflict and no likelihood of challenge to such action. Another course is to seek judicial resolution of the question of the legality of the recess appointments. I am not anxious to engage in litigation but maybe both Boards would agree that a definitive answer is needed and that this is the only way to get it.

It does seem to me that we do not have much time to agree on a course of action. Business takes me to Phoenix the early part of next week. I could come in to Washington on Wednesday, February 10, to discuss these matters with you or anyone else that may be required on a face to face basis. I may be reached through Tuesday afternoon at the Marriott's Camelback Inn in Scottsdale, Arizona, at 205/948 1700.

Very truly yours,

Bill McCalpin
P. Wm. McCalpin

FWM:np

COMPLAINT EXHIBIT C

withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of First-Citizens Bank and Trust Company of South Carolina, Columbia, South Carolina, for consent to merge, under its charter and title, with Bank of Chesterfield, Chesterfield, South Carolina, and to establish the two offices of Bank of Chesterfield as branches of the resultant bank.

Memorandum re: Deferral of Losses on Asset Sales.

The Board further determined, by the same majority vote, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,115-L—Franklin National Bank, New York, New York

Case No. 45,118-L—The First National Bank and Trust Company of Tuscola, Tuscola, Illinois

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters added to the agenda in a meeting open to public observation; and that the matters added to the agenda could be considered in a closed meeting by authority of subsections (c)(4) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4) and (c)(9)(B)).

Dated: February 22, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[3-202-82 Filed 2-23-82; 11:35 am]

BILLING CODE 6714-01-M

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FEDERAL ELECTION COMMISSION

[FR-S 245]

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, February 25, 1982, 10 a.m.

CHANGE IN MEETING: The following matter has been added:

AO 1981-80 (Reconsideration following Commission approval on 2-18-82)

DATE AND TIME: Tuesday, March 2, 1982, 10 a.m.

PLACE: 1325 K Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance, Litigation, Audits, Personnel.

DATE AND TIME: Wednesday, March 3, 1982, 10 a.m.

PLACE: 1325 K Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Continuation of Executive Session of 3-2-82, if necessary.

DATE AND TIME: Thursday, March 4, 1982, 10 a.m.

PLACE: 1325 K Street, N.W., Washington, D.C. (fifth Floor).

CHANGE IN MEETING: The open meeting previously scheduled for this date has been cancelled due to lack of business.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Public Information Officer, Telephone: 202-523-4065.

Lena L. Stafford,
Acting Secretary of the Commission.

[3-207-82 Filed 2-23-82; 4:03 pm]

BILLING CODE 6715-01-M

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FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 7798, February 22, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., February 25, 1982.

CHANGE IN MEETING: The following item has been added:

Item No., Docket No., and Company

CP-10. Docket No. CP82-195-000,
Consolidated Gas Supply Corporation

Kenneth P. Plumb,

Secretary.

[3-206-82 Filed 2-23-82; 3:55 pm]

BILLING CODE 6717-01-M

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FEDERAL MARITIME COMMISSION

TIME AND DATE: 9 a.m., March 3, 1982.

PLACE: Hearing Room One, 1100 L Street, N.W., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Agreement No. 10071-1: Modification of

the Cruise Lines International Association to specify qualifications for membership and financial responsibility.

2. Procedures for disposition of matters before the Commission.

Portion closed to the public:

1. Docket No. 79-9: Prudential Lines, Inc. v. Continental Grain Company—Consideration of request for oral argument and possible consideration of the record.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523-5725.

[3-204-82 Filed 2-23-82; 1:41 pm]

BILLING CODE 6730-01-M

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LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: 2 p.m.-5 p.m., Thursday, March 4, 1982 and 10 a.m.-5 p.m., Friday, March 5, 1982.

PLACE: Legal Services Corporation Headquarters, eighth floor meeting room, 733 15th Street, NW.

STATUS: Open meeting (except for consideration of personnel and litigation matters which may be closed by vote of the Board of Directors pursuant to 45 CFR 1622.5 (a), (e) and (b)).

MATTERS TO BE CONSIDERED:

- (1) Adoption of Agenda.
- (2) Introduction of Board Members.
- (3) Approval of Closing a Portion of Meeting.
- (4) Approval of Minutes of December 4 and December 31, 1981 Meetings.
- (5) Ratification of Actions of December 31, 1981 Meeting.
- (6) Selection of Interim Chairman of the Board.
- (7) Review of Litigation and Retention of Outside Counsel (may be discussed in executive session).
- (8) Consideration of Vacancy in Office of President of the Corporation as of March 31, 1982 and other personnel matters (may be discussed in executive session).
- (9) Briefing of History of the Legal Services Corporation by Former Board Chairman Roger Cramton.
- (10) Briefing by Marshall Breger, former Board Member.
- (11) Briefing by Corporation President Dan Bradley and Senior Staff including a financial report.
- (12) Discussion of Selection of Auditor for FY '82.
- (13) Consideration of Board Committees.
- (14) Review of Policy concerning 1982 funding for recipients.
- (15) Consideration of the draft 1981 Annual Report.
- (16) Comments by Members of the Public.
- (17) Other Business.
- (18) Future Meeting Dates.
- (19) Adjournment.

FOR FURTHER INFORMATION CONTACT:
John Meyer, Executive Office (202) 272-4040.

Issued: February 22, 1982.

William J. Olson,
Chairman.

[S-230-82 Filed 2-23-82 4:54 pm]
BILLING CODE 6230-35-02

[2P0401]

PAROLE COMMISSION

National Commissioners (the Commissioners presently maintaining offices at Bethesda, Maryland, Headquarters).

TIME AND DATE: 10 a.m., Thursday, February 25, 1982.

PLACE: Room 420-F, One North Park Building, 5550 Friendship Boulevard, Bethesda, Maryland 20015.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 4 cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE

INFORMATION: Linda Wines Marble, Chief Case Analyst, National Appeals Board, United States Parole Commission; (301) 492-5987.

[S-230-82 Filed 2-23-82 11:58 am]
BILLING CODE 4410-01-M