

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD A. HORN,

Plaintiff,

v.

FRANKLIN HUDDLE, JR., *et al*,

Defendants.

Case No. 1:94-CV-1756 RCL

**NON-PARTY JOHN A. RIZZO'S MOTION FOR RECONSIDERATION OF THE
MARCH 30, 2010 MEMORANDUM**

By and through undersigned counsel, Non-Party John A. Rizzo respectfully moves the Court to reconsider its March 30, 2010 Memorandum (“Memorandum”) [Dkt. 521], and remove a sentence contained in that Memorandum that indicates “findings” of wrongdoing by Mr. Rizzo.¹ The contested allegations against Mr. Rizzo have not been subject to any proceedings sufficient to determine them “findings” of wrongdoing.

The Memorandum identifies Mr. Rizzo as one of the Central Intelligence Agency (“CIA”) Office of General Counsel attorneys about whom Plaintiff has made allegations of wrongdoing. Memorandum at 2. The Court states that the “the allegations of wrongdoing by the government attorneys in this case are not only credible, they are admitted” in support of its recommendation that the Department of Justice refer these allegations of wrongdoing to the

¹ The Memorandum currently suggests that Mr. Rizzo has had his day in Court and has been found guilty of wrongdoing alleged by the Plaintiff. This inference belies the reality that Mr. Rizzo contests personal wrongdoing and the Plaintiff’s allegations have not yet been subjected to any level of scrutiny let alone cross-examination. Such concern is not unfounded as the media has already reported attorney wrongdoing by all those involved as overwhelmingly and conclusively demonstrated. The article in fact quotes the very sentence Mr. Rizzo is asking the Court to remove. See Mike Scarcella, *Federal Judge Approves \$3 Million Settlement in CIA Suit*, Nat’l Law Journal, March 31, 2010.

Inspector General. *Id.* at 5. The Court's statement is inconsistent with the record in this case, as Mr. Rizzo has not admitted any personal wrongdoing, and therefore should be removed from the Court's Memorandum.

There is no basis for any determination that Plaintiff's allegations regarding Mr. Rizzo are "credible." None of the allegations have been subject to the adversarial process. Nor has Mr. Rizzo admitted any personal wrongdoing. Rather than admitting the Plaintiff's allegations, Mr. Rizzo has strongly contested those allegations. *See* Initial Response of Non-Party John A. Rizzo to Plaintiff Richard A. Horn's Motion for an Order to Show Cause (Oct. 23, 2009) [Dkt. 504]. Furthermore, the Court has made certain assertions in this Memorandum that do not appear to be factually grounded but instead are based solely on Plaintiff's unsupported allegations in discovery motions.² Mr. Rizzo's personal wrongdoing is inferred based on Plaintiff's counsel arguments attempting to secure deposition testimony from a third party rather than sworn testimony contained in declarations, affidavits or other sworn testimony. Memorandum at 6.

For the foregoing reasons, John A. Rizzo respectfully requests that the Court reconsider the content of the Memorandum and remove the penultimate sentence in the first paragraph at page 5.

² The Court states that "there is disturbing evidence in a sealed motion [496] indicating that misconduct occurred." Memorandum at 6. The Court appears to rely on counsel's assertions of wrongdoing in the cited Plaintiff's Motion to Depose Former State Department IG Investigator of the State Departments' IG office. There are no allegations of any personal wrongdoing by Mr. Rizzo. Instead, the Court relies on the Plaintiff's characterization of unsubstantiated hearsay regarding the facts of the underlying employment case rather than addressing the allegations by the Plaintiff against the non-parties. Mr. Rizzo also notes that this "evidence" has not even been seen unredacted by the non-parties much less been subject to adversarial proceedings. Mr. Rizzo is also troubled that this reliance on such a motion, rather than sworn testimony, declaration or affidavit, misconstrues the weight of the "evidence" of alleged wrongdoing.

Dated: April 1, 2010

/s/E. Lawrence Barcella, Jr.

E. Lawrence Barcella, Jr. (D.C. Bar No. 49841)

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on this 1st of April, 2010, a copy of the foregoing was served electronically via the CM/ECF System, to:

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