

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CITIZENS FOR RESPONSIBILITY AND)		
ETHICS IN WASHINGTON,)		
)	
Plaintiff,)		
)	
v.)		Civil No.17-0432 (TNM)
)	
U.S. DEPARTMENT OF JUSTICE,)		
)	
Defendant.)		
_____)		

**PLAINTIFF’S STATEMENT AS TO WHETHER THIS CASE IS RELATED TO
CAMPAIGN FOR ACCOUNTABILITY V. U.S. DEPARTMENT OF JUSTICE**

By Minute Order dated February 2, 2018, this Court directed the parties to file jointly or separately their views regarding whether this case is related to *Campaign for Accountability v. U.S. Dep’t of Justice*, Civil No. 16-1068 (KBJ), under the terms of LCvR 40.5. That rule provides in relevant part that cases are deemed related and subject to assignment to the same judge when they “(i) relate to common property, or (ii) involve common issues of fact[.]” LCvR 40.5(a)(3). Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”) hereby responds.

The instant case arises out of an earlier lawsuit CREW filed against the Department of Justice (“DOJ”) under the Administrative Procedure Act to compel the publication of certain Office of Legal Counsel (“OLC”) opinions, *CREW v. U.S. Dep’t of Justice*, Civil No. 13-1291 (EGS). After the D.C. Circuit upheld the dismissal of that lawsuit, *CREW v. Dep’t of Justice*, 846 F.3d 1235 (D.C. Cir. 2017), CREW filed the complaint at issue here under the Freedom of Information Act (“FOIA”). With its newly filed complaint, CREW sought to comply with the

jurisdictional and remedy parameters the D.C. Circuit spelled out, including requesting relief for CREW only, and not the public at large.

Campaign for Accountability's ("CfA") lawsuit, which was pending at the time this second CREW lawsuit was filed, also sought to compel DOJ to disclose OLC opinions under the FOIA. Unlike this lawsuit, however, CfA's initial complaint sought relief that the D.C. Circuit held was specifically foreclosed by the FOIA, namely an order that DOJ disclose OLC opinions to the public, not simply CfA. On this basis, CREW concluded the two cases were not related within the meaning of LCvR 40.5. On September 29, 2017, the district court dismissed the *CfA* case with leave to amend. CfA filed an amended complaint on October 27, 2017. This time, CfA conformed its requested relief to the D.C. Circuit's opinion in the *CREW* case, seeking an order that DOJ disclose to CfA specified OLC opinions. In light of these changes, CREW in a supplemental response to defendant's notice of supplemental authority (Dkt. 21) noted "the amended complaint in the *Campaign for Accountability* lawsuit may bring that case and this one within the scope of LCvR 40.5 (b)(3) as related cases."

CREW submits that the application of Local Rule 40.5 to this case remains somewhat uncertain, given that each case still seeks relief that would run to the specific plaintiff only. To be sure, the amendments to CfA's complaint and the modifications CREW made to conform to the D.C. Circuit's opinion bring the two cases much closer together. CfA and CREW have both defined a significantly overlapping body of OLC opinions each submits DOJ is required to provide them under the FOIA. Both rely on the same FOIA provisions as creating that duty, making the legal issues identical.

DOJ has advised CREW it opposes consolidation of the two cases because the *CREW* case is fully briefed and ripe for decision, while in the *CfA* case briefing is about to begin. While

true, CREW submits these differences are far from determinative, especially as both cases are likely to be resolved ultimately by the D.C. Circuit. Accordingly, while CREW does not oppose proceeding separately, given the common issues of fact and law between the two cases assignment to the same district judge seems most sensible.

Respectfully submitted,

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