

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

MONTGOMERY BLAIR SIBLEY,

Case. No.: 2015 CA 002442 B

PLAINTIFF,

VS.

**PLAINTIFF'S RESPONSE TO DEFENDANT
BOEHNER'S MOTIONS TO EXPEDITE & STAY**

THE HONORABLE MITCH McCONNELL, AND
THE HONORABLE JOHN A. BOEHNER,

DEFENDANTS.

Plaintiff, Montgomery Blair Sibley (“Sibley”), responds to the Motions to Expedite and Stay of Defendant Boehner (“Boehner”), and states as follows:

I. BOEHNER’S *AD HOMINEM* ARGUMENT DESERVE SANCTION BY THIS COURT

How low will the Court allow the bar of professionalism to go before it responds? William Pittard, counsel for Boehner, commences his Motion to Stay with irrelevant, gratuitous, *ad hominem* attacks on Sibley which are offensive, *obit dicta* without factual basis, and have no place in a legal brief. As noted in *Hooks v. Astrue*, 2012 U.S. Dist. LEXIS 114212 (E.D. Tenn. Aug. 14, 2012): “Engaging in *ad hominem* attacks is not within the professional standards expected of officers of the court.”

Sibley demands response to Mr. Pittard’s inappropriate *ad hominem* arguments. Indeed, this Court should *sua sponte* strike Mr. Pittard’s Motion to Stay in order to make clear that such arguments are unacceptable in this Court. To allow such *ad hominem* arguments to stand without rebuke would only confirm to Sibley that this Court is being swayed by them and create an improper appearance of bias against Sibley. Plainly, it is beyond dispute that “[a] fair trial in a fair tribunal is

a basic requirement of due process. Fairness, of course, requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness.” *In re Murchison*, 349 U.S. 133, 136 (1955). Simply stated, it will appear probable to Sibley if this Court refuses to address Mr. Pittard’s *ad hominem* arguments that it is basing its decision upon them and thus creating the public perception of “unfairness”.

II. THE MOTION TO EXPEDITE SHOULD BE DENIED

Sibley opposes Boehner’s Motion to Expedite for three reasons. First, though this matter was remanded to this Court on October 14, 2015, Mr. Pittard waited two weeks until the 11th hour to move to expedite his Motion to Stay. Second, this Court must note that Mr. Pittard did not request from Sibley an extension of time to respond to the First Amended Complaint in this matter or a stay of discovery, both of which would have obviated the need for this Motion to Expedited consideration of the Motion to Stay.

Last, and most importantly, this Court must take notice that Sibley does not file electronically, and hence any response he files in the Court will be seven (7) to ten (10) days after he received Boehner’s motions.

Accordingly, for Mr. Pittard’s unclean hands, the Motion to Expedite must be denied.

III. THE MOTION TO STAY IS IN THE WRONG COURT

First, Boehner’s Motion to Stay is in the wrong court. Congress has given express jurisdiction to the Article III courts – the D.C. District Court (FRCP, Rule 62. Stay of Proceedings to Enforce a Judgment) or the D.C. Circuit Court of Appeals (FRAppP, Rule 8. Stay or Injunction Pending Appeal) – to determine if a stay of the remand order is equitably warranted. Thus, it is to those courts, where the federal subject-matter jurisdictional issues must be ultimately determined, where

Boehner needs to turn for the relief he seeks. Indeed, it would be imprudent for this Court to wade in on those federal issues before the Article III courts have addressed them. Hence, this Court should deny the requested stay.

Second, contrary to Boehner's assertion¹, Congress has already made clear that this Court is to proceed after remand absent an Article III stay. "A state court is free to proceed post-remand, even if the remand order has been appealed, unless a stay order has been issued. *Gonzalez Guilbot v. Estate of Gonzalez Vallejo*, 267 S.W.3d 556, 560 (Tex. App.--Houston [14th Dist.] 2008, *pet. granted*); *Drew v. Unauthorized Practice of Law Committee*, 970 S.W.2d 152, 156 (Tex. App.--Austin 1998, *pet. denied*) (holding that state district court could proceed with case on remand from federal court notwithstanding that appeal of remand order was pending in circuit court of appeals because there is no automatic stay pending appeal in federal system and appellant did not request stay); *see also* 28 U.S.C. §§ 1447(c), (d) ("A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.").

Third, the question presented by the Motion to Stay is not the merits of the instant First Amended Complaint, but instead whether a stay pending appeal is equitable given all the circumstances. In *Shinholt v. Angle*, 90 F.2d 297, 298 (5th Cir. 1937), *cert. den.* 32 U.S. 719 (1937) the Court stated: "The question presented was not whether the court could or should grant the ultimate relief sought. That question was being transferred to another tribunal. The question was: Upon a consideration of all the facts, would harm result to either party as a result of the granting or

¹ "While Speaker Boehner's appeal proceeds, this case, insofar as it is against him, remains in federal court, and this Court therefore should not proceed as to him." (Mot. to Stay, p. 3)

denial of the stay, and were there probable grounds for an appeal to protect rights which might be prejudiced by a refusal to grant the stay?” Thus the Article III question of whether there exist “probable grounds for an appeal” is properly committed to the Article III courts.

Notably, to date, some two weeks after the Order of Remand, no stay order was sought by Boehner nor issued in this case by either Article III court.

Finally, counsel for Boehner plays fast and loose with the facts. Mr. Pittard claims that: “Nor would Mr. Sibley, or the public, be harmed by a stay . . . Mem. Op. at 6 (noting Mr. Sibley’s concession that he ““has not suffered an injury-in-fact which is concrete and particularized”” (quoting Mr. Sibley’s federal court filing; emphasis in Mr. Sibley’s filing))”. Mr. Pittard’s claim in this regard is disingenuous as that admission was solely relevant to the Article III “standing” question raised in the Article III court – a concern that does not exist in this Article I court where Sibley is most emphatically claiming “harm”. Hence, for Mr. Pittard to conflate the two to argue that Sibley would not be harmed by a stay is intellectually dishonest at best.

WHEREFORE, Sibley respectfully requests that Boehner’s Motions to Expedite and Stay be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Email on (i) Peter R. Maier, Special Assistant United States Attorney, Counsel for Defendant, The Honorable Mitch McConnell, (Peter.maier2@usdoj.gov) and (ii) William Pittard, Deputy General Counsel, Counsel for The Honorable John A. Boehner, Office of General Counsel, United States House of Representatives, (William.Pittard@mail.house.gov) this October 29, 2015.

MONTGOMERY BLAIR SIBLEY

Plaintiff

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By: _____
Montgomery Blair Sibley