

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

GARLAND FAVORITO, MICHAEL
SCUPIN, TREVOR TERRIS, SEAN
DRAIME, CAROLINE JEFFORDS,
STACY DORAN, CHRISTOPHER
PECK,
ROBIN SOTIR and BRANDI
TAYLOR,
Petitioners,

v.

FULTON COUNTY, FULTON
COUNTY
BOARD OF REGISTRATION AND
ELECTIONS, and FULTON
COUNTY
CLERK OF SUPERIOR AND
MAGISTRATE COURTS,

Respondents.

CIVIL ACTION NO.
2020CV343938

RESPONDENTS' REQUEST FOR STAY OF PROCEEDINGS
BY SPECIAL APPEARANCE

Respondent Fulton County Board of Registration and Elections file this Request for Stay without waiving its right to be properly served and provided an opportunity to file responsive pleadings.

The Fulton County Board of Registration and Elections (BRE) is now a named defendant in this action, having been added to this civil case by Order of the Court

on April 21, 2021.¹ The Petitioners have not made any effort to serve the BRE. The BRE has not appeared in this case. The BRE has not filed any responsive pleadings and has not been given the opportunity to file Affirmative Defenses. The BRE, once served, intends to file responsive pleadings including dispositive motions.

The appropriate course of civil litigation should not be aborted in this case. There is no emergency that requires immediate relief. The Petitioners have announced that they are not seeking to “decertify” the election results and, in fact, are not even mounting an election challenge.

The parties have not engaged in any discovery (Interrogatories, Depositions, Requests to Admit, Notices to Produce) as a means of limiting the issues or crystallizing the areas of disagreement.

At this point, the BRE, having not been served and having not been given the opportunity to file responsive and dispositive motions, are now confronted with the effort of the Petitioners to achieve the relief that they seek in their Petition: access to the ballots for testing, scanning, and analysis. Apparently, the Petitioners contend that they are entitled to the relief they seek at the outset, following which, at some undetermined time, they will serve the Respondents.

¹ The Respondents filed a motion to substitute the BRE on January 27, 2021. In the Court’s Order granting the Petitioner’s motion on April 21, the court did not indicate how, exactly, the “Respondents” did not object, given the fact that that Respondents – Fulton County BRE and Fulton County – were not served with the Petitioner’s Motion and no attorneys had filed an appearance on behalf of either the BRE or Fulton County. This court references a hearing on March 25, 2021, but neither the BRE, nor Fulton County had been served and no attorney had filed an appearance on behalf of either entity by that time.

The Civil Practice Act empowers the court to permit a substitution of parties in certain circumstances automatically, such as when a public official, sued in his or her official capacity, is replaced in office. OCGA § 9-11-25. But in other circumstances this Rule does not obviate the need to secure the new party's attendance through lawful process. In short, the new party, added by the Petitioner with the approval of the court, must be served and provided an opportunity to file responsive pleadings. See *Massengale v. Eva Cook Realtor, Inc.*, 155 Ga. App. 757, 758 (1980) ("The trial court did not err in striking this attempt to substitute parties who were never served with this complaint"); *McLean v. Matheny*, 240 N.C. 785, 787 (1954) ("the court could not have brought the corporation in as a party defendant without its consent, either expressed or by entering a general appearance, except by causing summons to be served upon it"); *Southern Athletic/Bike v. House of Sports, Inc.*, 53 N.C.App. 804 (1981) (same). If a party is simply misnamed in the initial Complaint, new service or summons is not necessary to correct the name. But when the party being added is actually a new person or entity, proper service is indispensable. *Vaughan v. Brown*, 181 Ga. App. 680 (1987).

By this Limited Appearance, the BRE urges the court to stay these proceedings. The court should provide an opportunity to the BRE to file responsive and dispositive motions. The court should provide the BRE the right to engage in

discovery. That is the way in which civil litigation is properly managed in the absence of an emergency that necessitates urgent action to maintain the status quo.

The BRE objects to any proceedings, including informal meetings or formal court hearings until such time as the BRE is served and the BRE is given an opportunity to respond in accordance with the Georgia Civil Practice Act.

RESPECTFULLY SUBMITTED,

GARLAND, SAMUEL & LOEB, P.C.

/s/ Donald F. Samuel

DONALD F. SAMUEL
Georgia Bar No. 624475

/s/ Amanda Clark Palmer

AMANDA CLARK PALMER
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CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed this RESPONDENTS' REQUEST FOR STAY OF PROCEEDINGS BY SPECIAL APPEARANCE using the ODYSSEY eFileGA system which will automatically send email notification of such filing to all attorneys and parties of record.

This the 26th day of May, 2021.

RESPECTFULLY SUBMITTED,

GARLAND, SAMUEL & LOEB, P.C.

/s/ Donald F. Samuel

DONALD F. SAMUEL

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