

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

WILLIAM M. WINDSOR,

Plaintiff,

v.

JUDGE WILLIAM S. DUFFEY,  
MAID OF THE MIST CORPORATION,  
MAID OF THE MIST STEAMBOAT  
COMPANY, LTD.,  
JUDGE ORINDA D. EVANS,  
JUDGE JULIE E. CARNES,  
JUDGE JOEL F. DUBINA,  
JOHN LEY AND JAMES N. HATTEN,

Defendants.

CIVIL ACTION NO.

1:11-CV-01922-TWT

**THE FEDERAL DEFENDANTS' MOTION FOR AN EXTENSION OF  
TIME TO FILE RESPONSIVE PLEADING OR MOTION  
AND BRIEF IN SUPPORT**

Pursuant to Fed. R. Civ. P. 6(b)(1), defendants Judge William S. Duffey, Judge Orinda D. Evans, Judge Julie E. Carnes, Judge Joel F. Dubina, John Ley and James N. Hatten (the "Federal Defendants"), by and through the United States Attorney for the Northern District of Georgia, respectfully move this Court for an extension of time in which to respond to the Complaint and, in support, show as follows:

Plaintiff filed his Complaint in the Superior Court of Fulton County on May 19, 2011. The Complaint seeks a declaratory judgment against the Federal Defendants stating the following:

[T]hat O.C.G.A. § 10-6-5 allows a Georgia citizen (“Citizen”) to issue a power of attorney that delegates to an agent (“Agent”) the power to appear for the Citizen and in that citizen’s behalf before any personal having authority by the laws of any State or of the United States; to enter any personal appearance for the Citizen as a plaintiff or as a defendant in any legal action, suit, court, or hearing or to accept, waive or acknowledge any process or service of process from any court, board or agency whatsoever directed to the Citizen personally; to file motions, responses, and pleadings of any time; and to compromise, refer to arbitration, or submit to judgment in any such action or proceeding; to institute, supervise, prosecute, defend, intervene in, abandon, compromise, arbitrate, settle, dismiss, and appeal from any and all legal, equitable, judicial or administrative hearings, actions, suits, proceedings, attachments, arrests or distresses, involving the Citizen in any way, and in the Citizen’s behalf speak for the Citizen in open Court, in Judge’s chambers, or Clerk’s offices.

On May 24, 2011, plaintiff served the Complaint and Summons on the Honorable Orinda D. Evans. On June 1, 2011, plaintiff served the Complaint and Summons on the Honorable William S. Duffey, Jr. and James N. Hatten. On June 7, 2011, plaintiff served the Complaint and Summons on the Honorable Julie E. Carnes. The Federal Defendants removed the action to this Court on June 13, 2011.

Rule 81 of the Federal Rules of Civil Procedure provides, in relevant part,

that:

A defendant who did not answer before removal must answer or present other defenses or objections under these rules within the longest of these periods:

(A) 21 days after receiving--through service or otherwise--a copy of the initial pleading stating the claim for relief;

(B) 21 days after being served with the summons for an initial pleading on file at the time of service; or

(C) 7 days after the notice of removal is filed.

Fed.R.Civ.P. 81(c). The Federal Defendants did not file an answer prior to the removal of this action to federal court. Accordingly, the deadline by which the Honorable Orinda D. Evans must respond to the Complaint is June 20, 2011; the deadline by which the Honorable William S. Duffey, Jr. and James N. Hatten must respond to the Complaint is June 22, 2011; and the deadline by which the Honorable Julie E. Carnes must respond to the Complaint is June 28, 2011.

The Federal Rules of Civil Procedure provide that federal employees must serve a responsive pleading or answer to a complaint within sixty (60) days after the complaint has been served on the United States Attorney for the district in which the action is pending. See Fed. R. Civ. P. 12(a).

If plaintiff had filed his complaint in federal court, the deadline by which the Honorable Orinda D. Evans would have had to respond to the Complaint

would have been July 25, 2011; and the deadline by which the Honorable William S. Duffey, Jr. and James N. Hatten would have had to respond to the Complaint would have been August 1, 2011; and the deadline by which the Honorable Julie E. Carnes would have had to respond to the Complaint would have been August 8, 2011. The Federal Defendants respectfully submit that plaintiff should not be permitted to shorten this time period by virtue of improperly filing this action in state court rather than federal court. Moreover, the requested extension will enable the Federal Defendants to adequately review and respond to the allegations of the Complaint.

Accordingly, the Federal Defendants respectfully request this Court to grant their motion for an extension of time in which they must answer or otherwise respond to the Complaint until July 25, 2011.

Respectfully submitted, this 13<sup>th</sup> day of June, 2011.

SALLY QUILLIAN YATES  
UNITED STATES ATTORNEY

/s/Christopher J. Huber  
Assistant U.S. Attorney  
Georgia Bar No. 545627  
600 U.S. Courthouse  
75 Spring Street, SW  
Atlanta, Georgia 30303  
(404) 581-6303 (telephone)  
(404) 581-6150 (facsimile)

**CERTIFICATE OF COMPLIANCE**

I certify that the documents to which this certificate is attached have been prepared with one of the font and point selections approved by the Court in LR 5.1B (Times New Roman, 14 pt.) for documents prepared by computer.

This 13<sup>th</sup> day of June, 2011.

/s/Christopher J. Huber

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing THE FEDERAL DEFENDANTS' MOTION FOR AN EXTENSION OF TIME TO FILE RESPONSIVE PLEADING OR MOTION AND BRIEF IN SUPPORT on the plaintiff and counsel of record by causing true and correct copies thereof to be placed in the U.S. Mail, with proper postage affixed, and addressed as follows:

William M. Windsor  
P.O. Box 681236  
Marietta, Georgia 30068

Carl H. Anderson, Jr.  
4000 Sun Trust Plaza  
303 Peachtree Street NE  
Atlanta, Georgia 30308-3243

This 13<sup>th</sup> day of June, 2011.

/s/Christopher J. Huber