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Supreme Court of Wisconsin

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December 6, 2011

To:

Hon. Donald J. Hassin Jr.
Waukesha County Circuit Court Judge
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Waukesha, WI 53188

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*Additional Parties listed on Page Four

You are hereby notified that the Court has entered the following order:

No. 2011XX1409

Clinard v. Brennan

On December 5, 2011, the clerk of this court received from the clerk of the circuit court for Waukesha County a letter referencing Waukesha County Case No. 11CV3995 and containing the following statement: "Enclosed please find a copy of the summons and complaint filed in Waukesha County in the above case, a redistricting challenge under Section 751.035 and 801.50(4m)." Attached to the letter was a copy of a summons and complaint that appear to have been filed in the Waukesha County circuit court on November 28, 2011. The letter was dated November 30, 2011, but was not received by this court until December 5, 2011. The letter was assigned Case No. 2011XX1409 in this court. A copy of this letter is attached to the copies of this order being sent to counsel listed on this order.

The docket record of Waukesha County Case No. 11CV3995 indicates that the plaintiffs in that action, who are the petitioners in Case No. 2011AP2677-OA pending in this court, filed their amended complaint on December 2, 2011, and that their counsel had earlier filed a letter with the circuit court on November 29, 2011. The filing of an amended complaint in the circuit court action after the circuit court apparently mailed notice of that action but before this court received such notice raises a number of issues that require the filing of additional memoranda from the parties. The additional memoranda and responses shall be filed simultaneously as set forth below.

On December 5, 2011, proposed intervenors, Committee to Recall Wanggaard, Randolph Brandt, Committee to Recall Moulton, John Kidd, Committee to Recall Senator Pam Galloway, Nancy Stencil, and Rita Pachal, filed a letter advising this court that they had on the same date filed a motion to intervene in Waukesha County Case No. 11CV3995 and a separate motion to dismiss or stay that action. The proposed intervenors' letter stated that they were submitting copies of the motion to intervene, with attached affidavits, and the motion to dismiss or stay for inclusion in the record of this court's Case No. 2011XX1409 in order to ensure clarity and avoid confusion.

Also on December 5, 2011, Attorney Michael D. Dean filed a letter in Case No. 2011AP2677-OA enclosing a document entitled "Substitution of Counsel." The Substitution of Counsel stated that Michael D. Dean, LLC and Michael Best & Friedrich LLP agree that Michael D. Dean, LLC should be substituted in for Michael Best & Friedrich LLP as counsel for the petitioners in Case No. 2011AP2677-OA. Attorney Dean's letter accompanying the Substitution of Counsel acknowledged that the plaintiffs in Waukesha County Case No. 11CV3995 filed an amended complaint in that action, but it did not attach a copy of the amended complaint.

On December 6, 2011, the clerk of this court received from the clerk of the circuit court for Waukesha County a letter referencing Waukesha County Case No. 11CV3995 and enclosing a copy of an amended summons and complaint that was filed in that case. A copy of this letter is also attached to the copies of this order being sent to counsel listed on this order.

Upon consideration of the foregoing,

IT IS ORDERED that the parties identified in the complaint attached to the letter from the clerk of court for the Waukesha County circuit court, namely, plaintiffs, Dennis Clinard, et al., respondents, Michael Brennan, et al., and involuntary plaintiffs, Alvin Baldus, et al., as well as the proposed intervenors, Committee to Recall Wanggaard, et al., shall file a memoranda with the clerk of this court by 4:30 p.m. on December 9, 2011. A single, joint memorandum on behalf of all members of each group of litigants shall be permitted but is not required. An original and twelve copies of each memorandum and any supporting materials shall be filed and served on counsel for all other parties.

The memoranda shall address the following issues:

1. Did the letter dated November 30, 2011, sent by the clerk of the Waukesha County circuit court to the clerk of this court constitute valid notice of an action to challenge the apportionment of a state legislative district under Wis. Stat. §§ 801.50(4m)?
2. Assuming that the clerk of the Waukesha County circuit court mailed the letter notifying this court of the filing of the original complaint in that action on November 30, 2011, in accordance with Wis. Stat. § 801.50(4m), did the mailing of that notice terminate the jurisdiction of the Waukesha County circuit court over Case No. 11CV3995 and transfer jurisdiction over that matter to this court? Was the jurisdiction of the Waukesha County circuit court over Case No. 11CV3995 terminated and transferred to this court when the clerk of this court received the circuit court's notice of the original complaint in Case No. 11CV3995 on December 5, 2011? Did the circuit court have jurisdiction or competency to accept the filing of an amended complaint on December 2, 2011? Should the amended complaint be deemed to have been filed in this court?
3. Can a request for the appointment of a three-judge panel be withdrawn by a plaintiff/petitioner once the clerk of the circuit court has sent notice of the complaint to this court and before the appointment of a three-judge panel?
4. If the Waukesha County circuit court retained jurisdiction or competency to accept the filing of the amended complaint in Case No. 11CV3995 on December 2, 2011, what effect did the filing of the amended complaint have on the original complaint in that action and on the letter sent by the clerk of the circuit court to the clerk of this court? Did the filing of the amended complaint supersede the original complaint? Did the filing of the amended complaint nullify the letter regarding the filing of the original complaint that was sent to the clerk of this court by the clerk of the Waukesha County circuit court? Does this court have any jurisdiction, authority or obligation to appoint a three-judge panel upon the receipt of the letter notifying this court of the filing of the original summons and complaint despite the filing of an amended complaint in the circuit court which apparently no longer seeks the appointment of a three-judge panel?
5. In light of the letter sent by the clerk of the Waukesha County circuit court to the clerk of this court, did the Waukesha County circuit court have jurisdiction or competency to accept the filing of the proposed intervenors' motion to intervene and motion to dismiss or stay? Should the proposed intervenors' motions be deemed to have been filed in this court in Case No. 2011XX1409?

Is intervention proper in this court in a proceeding for the appointment of a three-judge panel under Wis. Stat. §§ 751.035 and 801.50(4m) or should such a motion be filed with the three-judge panel? May this court dismiss or stay a matter that has been referred to this court under Wis. Stat. §§ 751.035 and 801.50(4m) instead of appointing a three-judge panel?

IT IS FURTHER ORDERED that by 12:00 p.m. on December 12, 2011, the plaintiffs, respondents, involuntary plaintiffs, and proposed intervenors shall file responsive memoranda responding to the arguments of the other parties regarding the issues set forth above.

Prosser, J., did not participate.

A. John Voelker
Acting Clerk of Supreme Court

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