

## District of Columbia Struggling With Anti-SLAPP Law

The District of Columbia instituted an anti-SLAPP procedure back in March but the judges are having a heck of a time figuring it out. (Don't feel bad D.C., California has had a SLAPP statute since 1992, and some judges still don't get it.)

Judge Rufus G. King III of the D.C. Superior Court got it right. A local television station did a report on the ridiculous amounts of overtime that was being paid to certain government officials. In one reported case of a fire department Lieutenant, his annual salary was \$90,000 but he had earned as much as \$119,000 in overtime pay one year.

That Lieutenant took exception with the fact that the news story had used terms like "racked up" and "month after month", claiming those statements were defamatory. His attorney apparently failed to explain or he refused to understand that only the "gist" of the statement need be true in order to defeat a defamation action, so he filed a defamation action against the television station, and the station quite properly brought an anti-SLAPP motion.

Judge King ruled that the report was a matter of public interest and therefore fell under the anti-SLAPP statute, and that the Lieutenant failed to demonstrate a likelihood that he could establish damages. Motion GRANTED, case DISMISSED. Good job D.C.

But then there was Judge Richard Leon. You may recall that a U.S. Department of Agriculture official named Shirley Sherrod left her job after a video was released, seemingly showing her confessing to discriminating against white farmers. It later came to light that the comments were arguably taken out of context due to the editing of the video. Sherrod didn't appreciate that, and sued blogger Andres Breitbart, among others, asserting in her complaint that the "deceptively edited" clip constituted defamation. Breitbart responded by bringing an anti-SLAPP motion, asserting that the posting of the clip was an act of protected speech.

Sure sounds like a SLAPP to me, but Judge Leon denied the motion out-of-hand with only a two sentence order. The U.S. Court of Appeals for the D.C. Circuit was stumped by that one as well, and today ordered Judge Leon to explain himself.

Less than a week ago, Judge Robert L. Wilkins out of the U.S. District Court for the District of Columbia was not nearly as concise as Judge Leon, and issued a 55-page opinion denying an anti-SLAPP motion, finding "that the special motion to dismiss procedure under the Anti-SLAPP Act does not apply to a federal court sitting in diversity."