

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JAMES M. MALONEY,

Plaintiff,

- against -

KATHLEEN M. RICE,

Defendant.
-----X

03 CV 786 (PKC) (AYS)

MEMORANDUM

Pursuant to the requirements delineated in Rule 6.3 of the Local Civil Rules of this Court, the undersigned respectfully sets forth the following factual matters that, it is believed, the Court has overlooked in rendering its text order dated August 11, 2015 (the “Order”) (**Exhibit 1** hereto), which found as moot Plaintiff’s motion (ECF Document 150) to remove Tatum J. Fox, Esq., of the Nassau County Police Department from the Notice of Electronic Filing (“NEF”) distribution on this case.¹ Those factual matters are as follows:

1. The response from the ECF Support Clerk to Plaintiff’s request to that office (which would appear to be substantially identical to the request subsequently made by Deputy County Attorney Pablo A. Fernandez, Esq., see ECF Document 151) indicated that the attorney(s) on the NEF distribution themselves must make such a request, implying that such a request made by anyone other than the attorney(s) would not be honored. Specifically, the ECF Support Clerk wrote to Plaintiff on August 3, 2015, in response to Plaintiff’s August 2, 2015, request: “If the attorneys in question no longer wish to receive NEFs from this case, they can file a Notice on the case with the request to be terminated from the case.” ECF Document 150-1. On August 7, 2015, Plaintiff pointed this out to the Court in his reply on the motion, see ECF Document 152 at footnote 1, believing that the request made by Mr. Fernandez would be as ineffective as was Plaintiff’s, which indeed has turned out to be the case (*see infra*).

¹ The ECF motion selected for that filing was “withdraw as attorney” because it was closest.

2. The NEF distribution or “bounce” of the County’s August 7, 2015, response to the motion (ECF Document 151) itself still included a distribution to Tatum J. Fox, Esq., of the Nassau County Police Department. Plaintiff also pointed this out to the Court in his reply on the motion. ECF Document 152 (noting that “the latest filing (i.e., the response itself) was still distributed to Ms. Fox”) (parenthetical within quotation in original).

3. The Order itself generated an NEF distribution to Ms. Fox. See Exhibit 1.

4. The NEF distributions to Ms. Fox (who is employed in a specialized office of the Nassau County Police Department apparently also including, *inter alia*, one of the former Nassau County Assistant District Attorneys who actually prosecuted Plaintiff for possession of nunchaku or “chuka sticks” under the state statute challenged in this case, see ECF Documents 150, 150-2 and 150-4) have apparently continued uninterrupted since the date of the Order. See **Exhibit 2** hereto (pdf printouts of NEFs received by the undersigned earlier this date). Such NEF distributions under the Court’s policy include a “free look” (i.e., a PACER fee exemption) for any and all documents noticed in each NEF or “bounce.” See cm/ECF User’s Guide (Revised April 2013) at page 14 (pdf page 16), available on the Court’s website at <https://img.nyed.uscourts.gov/files/forms/ecf-usermanual.pdf>.

WHEREFORE, it is respectfully submitted that Plaintiff’s motion (ECF Document 150) to remove Tatum J. Fox, Esq., of the Nassau County Police Department from the Notice of Electronic Filing distribution on this case is not and never was in fact moot, and the Court’s reconsideration of the motion and Order is therefore respectfully requested.

Dated: August 24, 2015
Port Washington, New York

/s
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