

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

AMANDA JONES, *plaintiff*,

Case No. 2:24-CV-10750-BRM-JSA

vs.

DAN KLEINMAN, *defendant*.

REPLY MEMORANDUM IN SUPPORT OF MOTION TO STAY PROCEEDINGS

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Plaintiff Amanda Jones, through undersigned counsel, respectfully submits the following in reply to Defendant Dan Kleinman's opposition to her motion to stay proceedings in this case:

1. Kleinman's opposition is untimely.

Jones filed her motion to stay on January 23, 2025 and noticed it for submission on February 18, 2025. The deadline to oppose the motion was February 4, 2025, *see* www.njd.uscourts.gov/sites/njd/files/2025Motions.pdf, but Kleinman waited until February 6, 2025 to file his opposition. The Court need not consider a brief that is filed out of time.

2. Kleinman misrepresents the first-filed rule.

Jones filed her complaint in the Middle District of Louisiana and this Court on the same day. Kleinman contends that because Jones technically filed her complaint in the District of New Jersey first,¹ the first-filed rule requires that she litigate her complaint here. But the first-filed rule is not automatic. It is discretionary. "Courts have consistently recognized that the first-filed rule 'is not a rigid or inflexible rule to be mechanically applied.'" *Senju Pharm. Co. v. Metrics, Inc.*, 96 F. Supp. 3d 428, 446 (D.N.J. 2015) (quoting *E.E.O.C. v. Univ. of Penn.*, 850 F.2d 969, 976 (3d Cir. 1988)).

The purpose of the first-filed rule is to "encourage[] sound judicial administration and promote[] comity among federal courts of equal rank." *Id.* (quoting *E.E.O.C.*, 850 F.2d at 971). Circumstances do not warrant the first-filed rule here. Jones has no desire to duplicate efforts.

¹It is true that the New Jersey complaint bears an earlier time-stamp, 3:02 AM EST, but the time stamps do not tell the whole story. Jones attempted to file the Louisiana complaint first (she opened the civil case there on November 25, 2024), but the court's CM/ECF system did not accept the PDF. Counsel had to wait for the court's clerk's office to open to request remote assistance. With assistance, the court's CM/ECF system finally accepted the PDF at 8:59 AM CST. These facts are distinguishable from the typical first-to-file situation.

Jones already explained that she filed her complaint in this Court as a protective measure only. Kleinman has successfully challenged at least one federal court's personal jurisdiction over him in a defamation case, and she anticipated that he would challenge the Middle District of Louisiana's personal jurisdiction over him. Her complaint expressly states that its filing is "out of an abundance of caution only" "to preserve all rights." [1 at ¶¶ 6, 19]

3. The question of whether the first-filed rule applies is already before the Middle District of Louisiana.

Kleinman already filed a motion to dismiss the complaint in the Middle District of Louisiana that argues the first-filed rule applies. That motion is now fully briefed. That court should get to decide whether Jones's complaint may proceed there. " 'District courts have always had discretion to retain jurisdiction given appropriate circumstances justifying departure from the first-filed rule;' and in exercising its discretion, a district court 'must act with regard to what is right and equitable under the circumstances and the law, and directed by the reason and conscience of the judge to a just result.' " *Senju Pharm. Co.*, 96 F. Supp. 3d at 446 (quoting *E.E.O.C.*, 850 F.2d at 972, 977). The Middle District of Louisiana has discretion to retain jurisdiction. If it does, Jones's complaint may proceed in that court as intended. In such event, the complaint in this Court will be unnecessary to preserve Jones's rights and can be dismissed.

4. There is no impediment to Jones's complaint proceeding in the Middle District of Louisiana.

In his reply in support of the motion to dismiss the complaint in the Middle District of Louisiana, Kleinman did not dispute that, whether he meant to or not, he waived any objection to the Middle District of Louisiana's exercise of personal jurisdiction over him.

There is therefore no impediment to Jones's complaint proceeding there, and it should. Jones consented to litigation in New Jersey if necessary, but Louisiana is an obviously preferable forum. This is a defamation case, and the statements are about a public-school educator in Louisiana. Louisiana has an interest in this case being decided at home. Kleinman specifically directed his statements to a Louisiana audience. [1 at ¶¶ 3, 13-18, 84; 6-2 at ¶¶ 3, 13-18, 84] To the extent Kleinman asserts truth as a defense or contests the extent of Jones's injury, the sources of proof are in Louisiana. Likely witnesses include persons who know Jones or know Jones's reputation and persons to whom Kleinman's statements were targeted. These persons are in Louisiana. (As alleged, Kleinman specifically directed his statements to a Louisiana audience. [1 at ¶¶ 3, 13-18, 84; 6-2 at ¶¶ 3, 13-18, 84]) Indeed, because the District of New Jersey is more than 100 miles from where these persons reside, it cannot compel these persons to testify at trial. *See* Fed. R. Civ. P. 45 (c)(1)(A), (d)(3)(A)(ii).

5. A stay is necessary to conserve the resources of this Court pending the Middle District of Louisiana's ruling.

These proceedings are in their infancy. The immediate issue (which court will hear this case) is already fully briefed in the Middle District of Louisiana.

In this Court, Kleinman filed a motion for injunctive relief [10] (which also relies on the first-filed rule) on the same day Jones filed this motion to stay. He noticed his motion for submission on March 3, 2025, which means Jones's response is not yet due. (If this Court does not grant a stay, it will be due February 17, 2025.)

Kleinman also filed a letter [13] requesting a pre-motion conference in which he stated his intent to file an Anti-SLAPP motion to dismiss. But he omits that this Court expressly denied his

request and ordered that any such motion “will be held in abeyance until after Judge Allen decides the [11] motion to stay.” [16]

Jones respectfully submits there is no reason not to grant a stay under the circumstances, and a stay is necessary to avoid the real risk of duplicative efforts (if not also conflicting rulings).

Accordingly, for the reasons stated here and in Jones’s memorandum in support of her motion to stay, this Court should issue an order staying these proceedings with instruction to the parties to advise the Court of the Middle District of Louisiana’s ruling on Kleinman’s motion to dismiss within 14 days of its issuance.

Respectfully submitted,

/s/ Kaja S. Elmer

Kaja S. Elmer, NJ Bar No. 077982013
Fishman Haygood LLP
201 St. Charles Avenue, Suite 4600
New Orleans, Louisiana 70170
t: 504-586-5252
kelmer@fishmanhaygood.com

Alysson Mills (*to be admitted pro hac vice*)
650 Poydras Street, Suite 1525
New Orleans, Louisiana 70130
t/f: 504-586-5253
alysson@alyssonmills.com

for Amanda Jones

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of Court using the ECF system which sent notification of filing to all counsel of record.

February 11, 2025

/s/ Kaja S. Elmer