

No. 12-3173

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

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**In re: CHRISTOPHER KNECHT,  
Petitioner.**

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**On Petition for Writ of Mandamus to the United States  
District Court for the Southern District of Ohio,  
Western Division, Case No. 1:12CV76, The Honorable  
Susan Dlott, Judge Presiding, and to the United States  
District Court for the Southern District of Ohio,  
Eastern Division, Case No. 2:12CV124, The Honorable  
John Graham, Judge Presiding.**

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**PETITION FOR WRIT OF MANDAMUS**

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**Christopher Knecht**  
**Petitioner Pro Se**

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**JURISDICTION AND VENUE**

This petition for the issuance of a writ of mandamus is brought pursuant to Rule 21, Federal Rules of Appellate Procedure, the All Writs Act of 1948 [28 U.S.C. §1651], and the Administrative Procedure Act of 1946 [5 U.S.C. §500 et seq.].

**STATEMENT OF FACTS**

Petitioner, *pro se*, brought a civil action in the United States District Court for the Southern District of Ohio, Western Division, filed on January 27, 2012, captioned as *Knecht v. Kasich*, 1:12CV76 (S.D.Ohio)(“*Knecht I*”), which was automatically assigned

to Magistrate Judge Karen Litovitz in addition to the Presiding Judge, Susan Dlott, on January 27, 2012.

On February 8, 2012, Magistrate Judge Karen Litovitz *sua sponte* Ordered a change of venue of that case to the United States District Court for the Southern District of Ohio, Eastern Division, where it to was automatically assigned to Magistrate Judge Norah King in addition to Presiding Judge John Graham, captioned as *Knecht v. Kasich*, 2:12CV124 (S.D.Ohio)(“*Knecht II*”).

The very next day after Magistrate Judge Litovitz’s *sua sponte* Order, *Knecht I* was transferred to the United States District Court for the Southern District of Ohio, Eastern Division, where Magistrate Judge Norah King issued an Order granting Petitioner leave to proceed *in forma pauperis*, and Ordering the service of the summons and complaint upon the defendant to answer or otherwise “respond to the complaint within forty-five (45) days after being served with a copy of the complaint and summons.” (*Knecht II*, at Doc. 3).

Petitioner recently submitted objections in *Knecht II* regarding the assignment and automatic assignment of Magistrate Judge Norah King; the Order of Magistrate Judge Norah King granting the defendant in *Knecht II* forty-five days to respond to the complaint; and is seeking recusal/disqualification of Magistrate Judge Norah King based on her erroneously decisions in a previous action Petitioner brought to that court which this Court had to remand and in which again presents an issue<sup>1</sup>, while simultaneously bringing this instant action to this Court regarding the *sua sponte* Order in *Knecht I*.

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<sup>1</sup> Magistrate Judge Norah King previously attempted to interpret civil rules in which this Court had to intervene; *Knecht v. Ohio Adult Parole Authority*, 215 F.3d 1326 (Table) 2000 WL 659030 (6<sup>th</sup> Cir. 2000), and is again doing nearly the same identical thing with an Order indicating that defendants in civil actions somehow are entitled to forty-five (45) days to answer or otherwise respond to the complaint, despite Rule 12, Federal Rules of Civil Procedure only providing twenty-one (21) days. This would have been one of several objections had Magistrate Judge Litovitz permitted Petitioner to object to her *sua sponte* change of venue order.

## **ISSUES PRESENTED**

### **A. IS A SUA SPONTE ORDER CHANGING VENUE A NONDISPOSITIVE MATTER?**

A change of venue in a civil action is definitely a nondispositive matter. Petitioner is hard pressed to find a civil case citation to support that fact as it relates to a *sua sponte* change of venue without the reliance upon 28 U.S.C. §§1391 or 1404 but rather based on a local rule in which the rest of the judicial circuit doesn't use, which in turn circumvents the right to submit objections pursuant to 28 U.S.C. §636(b)(1)(A) as codified under Rule 72(a), Federal Rules of Civil Procedure. Since the change of venue did not alter the claims of the action nor dispose of those claims, and the action is still active within the district court, such is not a dispositive motion or matter.

### **B. IS A SUA SPONTE ORDER CHANGING VENUE SUBJECT TO 28 U.S.C. §636(B)(1)(A) AS CODIFIED UNDER RULE 72, FEDERAL RULES OF CIVIL PROCEDURE?**

Since it's clear that a change of venue is nondispositive; regardless of whether it's brought by motion by a party to the action or issued *sua sponte*, it most definitely is subjected to the provisions of 28 U.S.C. §636(b)(1)(A) as codified in Rule 72, Federal Rules of Civil Procedure. 28 U.S.C. §636(b)(1)(A) states that a judge may designate a magistrate judge "to hear and determine any pretrial matter pending before the court" and that a judge may reconsider the decision of the magistrate regarding a pretrial matter "where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law." *Id.* Extremely hard for a judge to "see" that a magistrate judge's order is clearly erroneous or contrary to law if the petitioner isn't afforded the right to object to the erroneous decision of Magistrate Judge Litovitz sua sponte ordering a change in venue based on a local rule which gives no room for objection whatsoever.

**C. DOES S.D.OHIO CIV. R. 82.1 ELIMINATE THE PROCEDURAL  
REQUIREMENTS OF 28 U.S.C. §636(B)(1)(A) AS CODIFIED UNDER RULE 72,  
FEDERAL RULES OF CIVIL PROCEDURE?**

What the *Knecht I* court did was effectively eliminate the statutory authority of 28 U.S.C. §§1391 and 1404 with the implementation of S.D. Ohio Civ. R. 82.1. The district court for the Northern District of Ohio doesn't have a local rule similar to that of the district courts here in the Southern District of Ohio, nor do any of the other district courts within the Sixth Judicial Circuit. See: [www.ohnd.uscourts.gov/assests/Rules\\_andOrders/Local\\_Civil\\_Rules/CoverSheet.htm](http://www.ohnd.uscourts.gov/assests/Rules_andOrders/Local_Civil_Rules/CoverSheet.htm); [www.kywd.uscourts.gov/pdf/Joint\\_Civil\\_Rules.pdf](http://www.kywd.uscourts.gov/pdf/Joint_Civil_Rules.pdf); [www.kyed.uscourts.gov/pdf/gen\\_pdf/CIVIL\\_RULES.pdf](http://www.kyed.uscourts.gov/pdf/gen_pdf/CIVIL_RULES.pdf); [www.tned.uscourts.gov/docs/localrules.pdf](http://www.tned.uscourts.gov/docs/localrules.pdf); [www.tnmd.uscourts.gov/files/20110504LocalRules.pdf](http://www.tnmd.uscourts.gov/files/20110504LocalRules.pdf); [www.tnwd.uscourts.gov/pdf/content/LocalRules.pdf](http://www.tnwd.uscourts.gov/pdf/content/LocalRules.pdf); [www.mied.uscourts.gov/Rules/LocalRules/civilRules.cfm](http://www.mied.uscourts.gov/Rules/LocalRules/civilRules.cfm); and, [www.miwd.uscourts.gov/Rules%20OPINIONS/local\\_civil\\_rules.htm](http://www.miwd.uscourts.gov/Rules%20OPINIONS/local_civil_rules.htm)). Petitioner only had twenty hours to research and draft this Petition and was unable to check each local rules of each district court in the United States to see who does or does not proscribe to the *ad hoc* actions of the district courts of the Southern District of Ohio. Clearly the rest of this Judicial Circuit doesn't. S.D. Ohio Civ. R. 82.1 is an *ad hoc* rule which shifts the context of a controlling statute to create new meanings or improvised events. While adhocracies can be very good at problem solving and innovations (see, Bob Trivica, *New Organizational Designs: Information Aspects*, Ablex/Greenwood, 1999), the downsides include extremism in suggested or undertaken actions, and threats to democracy and legality rising from adhocracy's often low-key profile. *Id.* pg. 8.

The lower court specifically eliminated the authority of the federal venue statutes with the creation of it's district-only S.D. Ohio Civ. R. 82.1. The creation of that local rule

allows for the court to eliminate a parties ability to submit objections to a sua sponte change of venue despite 28 U.S.C. §636 stating otherwise. That local rule is not an extension of or to 28 U.S.C. §636 nor Rule 72, Federal Rules of Civil Procedure. If it were, it would provide a method in which to object.

The general venue statute for United States federal district courts is 28 U.S.C. §1391 with special rules listed in §§1392-1413, except within the Southern District of Ohio. 28 U.S.C. §1391(b)(1-3) states:

- (b)** A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in
  - (1)** a judicial district where any defendant resides, if all defendants reside in the same State,
  - (2)** a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or
  - (3)** a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

Venue can also be transferred from one federal district to another as noted under 28 U.S.C. §1404(a-d):

- (a)** For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.
- (b)** Upon motion, consent or stipulation of all parties, any action, suit or proceeding of a civil nature or any motion or hearing thereof, may be transferred, in the discretion of the court, from the division in which pending to any other division in the same district. Transfer of proceedings in rem brought by or on behalf of the United States may be transferred under this section without the consent of the United States where all other parties request transfer.
- (c)** A district court may order any civil action to be tried at any place within the division in which it is pending.
- (d)** As used in this section, the term “district court” includes the District Court of Guam, the District Court for the Northern Mariana Islands, and the District Court of the Virgin Islands, and the term “district” includes the territorial jurisdiction of each such court.

28 U.S.C. §§1391 and 1404 contain words such as ‘may’ and ‘within the interest of justice’ or ‘for the convenience of parties and witnesses’, or ‘upon motion, consent, or stipulation of all parties’, whereas S.D. Ohio Civ. R. 82 provides mandatory venue change based on a specific criteria with words like “shall”:

(a) **Scope of this Rule.** The filing of actions properly venued within this District **shall** be governed by the following rules, subject to the jurisdictional and venue requirements of all statutes, both general and specific.

(c) **Resident Defendant(s).** An action against a defendant or defendants resident in this district **shall** be filed at the location of court which embraces a county in which at least one defendant resides.

(d) **Corporate Residence, Venue When Indeterminate.** A corporation which is deemed to reside in this judicial district pursuant to 28 U.S.C. § 1391(c) is further deemed to reside in that county in which its principal place of business within the district is located, or, if none, in that county with which it has the most significant contacts. If such a corporation's county of residence cannot be determined under this rule, an action against such corporation **shall** be filed at a location of court determined in accordance with the following rules, in order of preference: (1) A county in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial party of property that is the subject to the action is located; or (2) any location of court.

(e) **Nonresident Defendant(s).** If no defendant is a resident of this district, an action **shall** be filed at the location of court embracing a county in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is situated.

(f) **Habeas Corpus Actions.** A habeas corpus action **shall** be filed at the location of Court which serves the county in which the state court judgment which is the subject of the habeas petition was filed.

[emphasis added]. The lower court’s local rules allow for a change of venue without having to consider 28 U.S.C. §§1391 or 1404 because that local rule eliminated any discretion found within venue statutes of the United States Code. The lower court, playing adversary for defendants, effectively eliminated the defense enumerated under Rule 12(b)(3) of the Federal Rules of Civil Procedure with the creation of S.D. Ohio Civ. R. 82.1. Reviewing page 5 of the S.D. Ohio Civ. R.; *Introduction to Civility*, it’s clear the

Courts have made litigation ‘predicable’ in the sense that it has pre-determined that all defendants suffer *forum non conveniens* instead of the discretionary provisions of 28 U.S.C. §§1391 and 1404 which permits the Courts to act ‘within the interest of justice’ or ‘upon convenience of parties and witnesses’ or even ‘upon motion, consent or stipulation of all parties’. The “consistency” mentioned in Rule 83, Federal Rules of Civil Procedure, has been eliminated by the enactment of S.D.Ohio Civ. R. 82.1. It explains why the Court cannot and would not cite to 28 U.S.C. §§1391 and 1404 as well as Rule 82, Federal Rules of Civil Procedure, because all those statutes/rules clearly provide the opportunity to be heard in relation to the unusual *sua sponte* Order to change venue when it typically involves a party filing a motion or moving the Court and not the Court acting as an adversary of the defendant whether providing *forum non conveniens* without the defendant availing himself to that defense or *sua sponte* changing venue without permitting an opportunity to submit objections.

#### **RELIEF SOUGHT/REASON WHY WRIT SHOULD ISSUE**

Petitioner seeks the issuance of a writ of mandamus directing the *Knecht II* court to transfer that action back to the *Knecht I* court with instructions to permit him the opportunity to submit objections to the *sua sponte* ‘Order’ of Magistrate Judge Litovitz transferring *Knecht I* in a matter of hours to the United States District Court in *Knecht II* without providing him any opportunity to file objections to a nondispositive matter which the lower courts have effectively eliminated with the enactment of Local Rule 82.1 of the Southern District of Ohio Civil Rules (hereafter, “S.D.Ohio Civ. R.”).

*Knecht I* no longer appears on the docket of that court and it would be impossible to submit objections regarding a nondispositive matter when that case had within hours been closed out and transferred to the *Knecht II* court. Petitioner seeks to have *Knecht II* transferred back to the court in *Knecht I* to permit him the simple opportunity to submit objections to a nondispositive matter arbitrarily and erroneously acted upon by Magistrate Judge Litovitz.

The writ should issue due to the erroneous actions and/or inactions of Magistrate Litovitz which are contrary to law. The sua sponte Order changing venue without affording the Petitioner an opportunity to submit objections is contrary to the Federal Magistrate Act. The All Writs Act as well as the Administrative Procedure Act permit this Court to issue a writ in mandamus compelling the lower courts to follow the federal statutes as outlined herein above.

Petitioner would have made multiple objections to the change in venue, arguing that the injuries he sustained allegedly due to the actions and/or inactions of the defendant were and currently are taking place right here in Cincinnati, Ohio; that such a venue change was not requested of the defendant who has the entire State at his disposal; where numerous witnesses for the Petitioner reside in Cincinnati, Ohio; the huge financial burden a transfer in venue would and now is creating; the previous experience with the Magistrate Judge in *Knecht II* which wasn't very constructive at all; and other issues which, in the interest of justice, could have resulted in *Knecht I* being an active case within the western division of the Southern District of Ohio.

I declare under penalty of perjury that the foregoing is both true and correct and am competent to testify to the same. 28 U.S.C. §1746(1).

Respectfully submitted,

CHRISTOPHER KNECHT

PETITIONER PRO SE

**Certificate of Service**

A copy of the foregoing was hand-delivered to the United States District Court for the Southern District of Ohio, Western Division, on February 13, 2012, with a duplicate copy being sent via USM to the United States District Court for the Southern District of Ohio, Eastern Division, at 85 Marconi Boulevard, Suite 260, Columbus, Ohio, 43215, this 13<sup>th</sup> day of February, 2012.

CHRISTOPHER KNECHT  
PETITIONER PRO SE