

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

OFFICE OF OPEN GOVERNMENT,)	
)	
)	
Plaintiff,)	
v.)	Case No. 2016 CA 007337 B
)	Judge John M. Campbell
MICHAEL YATES,)	
)	
)	
Defendant,)	

**DEFENDANT’S CONSENT MOTION TO ALTER OR AMEND THIS COURT’S
MARCH 5, 2018, ORDER OR, IN THE ALTERNATIVE, FOR CLARIFICATION**

Defendant Michael Yates, in his official capacity as chairman of the Mayor’s Advisory Commission on Caribbean Community Affairs (MACCCA), by and through counsel, and pursuant to Super. Ct. Civ. R. 59(e) and 60(b) and with Plaintiff’s consent, hereby moves this Court to alter or amend its March 5, 2018, Order or, in the alternative, requests clarification of the Order. Specifically, the Defendant requests that this Court alter or amend the March 5, 2018, Order to specify that MACCCA need only “publish on the District’s central meeting calendar” for a period of twelve months from the date of the March 5, 2018, Order or clarify the ambiguity in the Order to specify that the Court intended the remedial requirement to expire after twelve months from the date of the March 5, 2018, Order.

A Memorandum of Points and Authorities and proposed order are attached.

Dated: March 14, 2018

Respectfully submitted,

KARL A. RACINE
Attorney General for the District of Columbia

GEORGE C. VALENTINE
Deputy Attorney General
Civil Litigation Division

/s/ Charles J. Coughlin
CHARLES J. COUGHLIN [1016993]
Assistant Attorney General
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Counsel for Defendant

RULE 12-I CERTIFICATION

On March 14, 2018, undersigned counsel contacted Plaintiff's counsel to obtain Plaintiff's position as to the requested relief. Plaintiff responded that "[t]he OOG consents to the filing of the MACCCA's motion to alter, amend or to clarify the Order for specificity of the period MACCCA is to publish to the Central Meeting Calendar, so long as there is no reduction in the 12-month period."

/s/ Charles J. Coughlin
CHARLES J. COUGHLIN
Assistant Attorney General

CERTIFICATE OF SERVICE

This certifies that a copy of the foregoing was served electronically via Case File Xpress on March 14, 2018, to the following:

Johnnie I. Barton, Esq.
Office of Open Government
441 4th Street, NW, #830S
Washington, DC 20001

Counsel for the Plaintiff Office of Open Government

/s/ Charles J. Coughlin _____
CHARLES J. COUGHLIN
Assistant Attorney General

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT’S
CONSENT MOTION TO ALTER OR AMEND THIS COURT’S MARCH 5, 2018,
ORDER OR, IN THE ALTERNATIVE, FOR CLARIFICATION**

Defendant Michael Yates, in his official capacity as chairman of the Mayor’s Advisory Commission on Caribbean Community Affairs (MACCCA), by and through counsel, submits this memorandum of points and authorities and respectfully requests that the Court alter or amend its March 5, 2018, Order or, in the alternative, requests clarification of the Order.

I. BACKGROUND

On September 27, 2017, the Court granted, in part and denied in part, the Defendant’s Motion to Dismiss Plaintiff’s Amended Complaint or, in the Alternative, for Summary Judgment and Plaintiff’s Cross-Motion for Summary Judgment by written opinion. In the September 27, 2017, Opinion, the Court declined to find that MACCCA was required to publish to the District’s central meeting calendar, stating that “the Court cannot find, on the present record, that failing to post meeting records on a public website violates a statutory command to make available for public inspection. The statutory phrase [‘make available for public inspection’] is too general and too vague to support such a conclusion.” *See* September 27, 2017, Opinion at 5–6.

On March 5, 2018, the Court entered an Order memorializing its opinion in which it included, among other terms, the following remedial provision:

ORDERED that in order to facilitate oversight and enforcement of this Order, pursuant to D.C. Official Code § 2-579(d), MACCCA shall provide as an additional form of notice, at least one week's notice to OOG of the date, time, location, and draft agenda of any meeting of MACCCA occurring within twelve months of the date of this Order and shall also publish on the District's central meeting calendar...

See Order dated March 5, 2018. Defendant now moves to alter or amend the March 5, 2018, Order or, in the alternative, for clarification.

II. STANDARD OF REVIEW

Super. Ct. Civ. R. 59(e) states that a motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment. Super Ct. Civ. R. 60(b) states, in part, that “[o]n motion and just terms, the court may relieve a party or its legal representative from a[n] ... order ... for the following reasons: (1) mistake...; and (6) any other reason justifying relief from the operation of judgment.” The decision whether to grant or deny a motion to alter or amend judgment under Rule 59(e) lies within the broad discretion of the trial court. *Wallace v. Warehouse Employees Union No. 730*, 482 A.2d 801, 810 (D.C. 1984).

III. ARGUMENT

A. MACCCA Should Not Be Required to Provide Notice On The Central Meeting Calendar Indefinitely.

A judgment should be altered or amended when there is a “need to correct a clear error or prevent manifest injustice.” *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 1996). Here, although it appears the Court intended only to require MACCCA to publish to the District's central meeting calendar as an additional form of notice pursuant to D.C. Code § 2-579(d) for a period of twelve months, the March 5, 2018, Order is ambiguous as written. If read in

conjunction with the entire paragraph in the March 5, 2018, Order, the requirement is time-limited and consistent with the determination of the statutory language as the Court wisely opined in its September 27, 2017, Opinion. However, the ambiguity of the March 5, 2018, Order as written leaves that Order open to another interpretation which appears to conflict with the Court's September 27, 2017, Opinion and the provisions of the Open Meetings Act by creating an indefinite requirement not contemplated by the express language of the statute. Thus, this Court should alter or amend its March 5, 2018, Order or provide clarification to correct a clear error or prevent manifest injustice by avoiding the creation of an indefinite remedial measure which it does not appear this Court intended to create.

IV. CONCLUSION

Based on the foregoing, Defendant Michael Yates requests that the Court alter or amend the March 5, 2018, Order, or in the alternative, provide clarification of the Order.

Dated: March 14, 2018

Respectfully submitted,

KARL A. RACINE
Attorney General for the District of Columbia

GEORGE C. VALENTINE
Deputy Attorney General
Civil Litigation Division

/s/ Charles J. Coughlin
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Counsel for Defendants

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ORDER

Upon consideration of Defendant’s Consent Motion to Alter or Amend This Court’s March 5, 2018, Order or, in the Alternative, for Clarification, any opposition thereto, and the entire record in this matter, it is this _____ day of _____ 2018, for the reasons stated in Defendant’s motion,

ORDERED, that the Defendants’ Motion to Alter or Amend This Court’s March 5, 2018, Order or, in the Alternative, for Clarification is **GRANTED**; and it is

ORDERED, that the requirement in this Court’s March 5, 2018, Order shall be amended to state as follows:

ORDERED that in order to facilitate oversight and enforcement of this Order, pursuant to D.C. Official Code § 2-579(d), MACCCA shall provide as an additional form of notice, at least one week’s notice to OOG of the date, time, location, and draft agenda of any meeting of MACCCA occurring within twelve months of the date of this Order and shall also publish on the District’s central meeting calendar for any meeting of MACCCA occurring within twelve months of the date of this Order...

SO ORDERED.

Hon. John M. Campbell
Associate Judge

Copies to:

Charles J. Coughlin, Assistant Attorney General

Johnnie I. Barton, Esq.

Via CaseFileXpress