

Commonwealth of Massachusetts

Suffolk, SS

Superior Court

C.A. # 12- 2821- G

Twenty Four Taxpayers and )  
Others, Plaintiff's ) The Plaintiff, Brian Camenker, opposes the  
V ) the Defendant's Motion to Dismiss  
Marilyn M. Pettito Devaney )  
And Others <sup>1</sup> )

R. 9 ( B),(2), R. Sup. Ct.

The plaintiff, Inter Alia, Brian Camenker, Pro Se, opposes the Defendant's motion to dismiss the complaint and requests the court to extend the time for the remaining Plaintiffs to respond up to and including September 12, 2012, for the obvious time constraints of multiple plaintiffs in several counties. R. 9 ( b), ( 2), R. Sup. Ct. With or without an Order granting an extension, the underlying complaint is being Amended and may render moot the defendant's motion.

The plaintiff responds to the four main assertions of the defendants supporting their motion to dismiss and notes their misapplication to the complaint. As a R. 12, ( B). (6), M. R. Civ. Proc, motion it is generally treated as a motion for Summary Judgment under R. 56. M. R. Civ Proc. Having failed to show the absence of genuine material facts and an affidavit signed by the Defendants, the motion fails.

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<sup>1</sup> The Governor, the Governor's Council, A/K/A, Executive Council. Councillor Iannella was omitted in the Complaint by inadvertence. It is ministerial and not lacking as a proper party, since the Governor's Council as a body has been named to by the public and their right to enforce the constitution of the Commonwealth.

1. The plaintiffs intentionally omitted pleading for a Declaratory Judgment, being aware of the exemption of the Governor's Council. C. 231 A, Sec. 2, G. L. For no discernible reason, the defendants respond with one and one half pages of argument, with citations and footnotes to a matter not pleaded.

2. The Council's vote of July 25<sup>th</sup>, 2102, attempting to appoint the putative judicial nominee, Salinger, was a fruitless exercise and of no constitutional effect. It was a tortured and attempted appointment of an individual who lacked the constitutional cloak of a judicial nominee. Salinger's defective nomination on July 18<sup>th</sup>, 2012, lacked the presence of the Governor, or in his absence the Lt. Governor. His nomination was constitutionally infirm. See: Opinion of the Justices to the Council, 368 Mass 866, ( Sept. 9<sup>th</sup>, 1975).

" ..... the Governor must nominate and appoint the judicial officers personally .... ". Art. XI, sec. one, C.2, Pt. II. ( @ 874, id ). The Governor has incidental powers and can delegate them as he chooses. He did not surrender those powers and did not delegate them to Councillor Devaney on July 18<sup>th</sup>, 2012, who, without constitutional authority, called the council to assemble and chairing the council, she presumed to nominate Salinger; the lack of a quorum notwithstanding.

The Salinger appointment on July 25<sup>th</sup>, 2012, rested on a constitutionally infirm nomination, and could not be infused with constitutional life to effectuate the appointment. A Priori. Again, the Governor was absent on July 25<sup>th</sup>, 2012, and did not personally nominate or appoint Salinger, as the constitution mandates. Opinion of the Justices, ( Id ).

Salinger's nomination and appointment failed for lack of a constitutional imprimatur that could have only been exercised by the Governor, or in special circumstances, the Lt. Governor; neither of those events occurred on July 18<sup>th</sup>, or July 25<sup>th</sup>, 2012.



3. The defendants assert C. 29, sec. 69, G.L. does not apply. They adopt a narrow view of fiscal matters only, and omit the concise language that an obligation may occur. The noun was intentionally chosen by the legislature and includes by implication one's obligation to adhere to a court ruling.

4. The defendants characterize the acts of the Governor and the Council as 'procedures', which they are not required to follow. The Commonwealth's Constitution, the Declaration of the Bill of Rights, its Articles and Amendments are mandates. There is no procedure involved in their exercise. The Governor and the Council have a sworn duty to uphold and apply the constitution. There can be no higher duty. Asserting the nomination and appointment of judges and bestowing upon them the awesome power of the state as internal matters and a 'procedure' they need not follow, as the defendants claim; equates the constitutional mandates for the appointment of judges as a mere placebo, which Councillor Devaney clearly manifested.

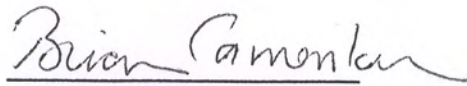
The defendants also refer to the Open Meeting statute, C. 30 A, sec. 11 ½, G.L. which was not pleaded by the plaintiffs, (being aware the council is not subject to the statute), and they cite *Pineo v Executive Council*, 412 Mass 31, (1992).

*Pineo* is instructive and not favorable to the defendants. It re-affirms Devaney pre-empting the Governor in the purported Salinger nomination on July 18<sup>th</sup>, 2012. On December 26<sup>th</sup>, 1990, the day after Christmas, the Council met to nominate Thomas McCusker, (then on the Racing Commission), as a Clerk-Magistrate and nominate several legislators to judgeships. *Pineo*, acting for a newspaper was not notified of the council's meeting to distribute Christmas gifts; and claimed non compliance with the Open Meeting Law.

As in the present matter, the Council lacked a quorum. They re-convened on January 2<sup>nd</sup>, 1991, with a quorum and confirmed the nominees. The court held the Council is not subject to the Open Meeting Law, but it is part of the Executive branch, and its power flows from the Constitution and not the legislature.

The constitution provides that the council meets at the discretionary call of the Governor. " ... The Governor shall have authority from time to time, at his discretion, to assemble and call together the councilors ....". Pineo, @ 35,38, Id. The assembly of the Council on July 18<sup>th</sup>, 2012, to nominate Salinger, was not called by the Governor, but by Councillor Devaney, outside of a constitutional mandate..... the essence of the plaintiff's complaint.

The defendant's motion to dismiss should be denied.



Brian Camenker, Pro se

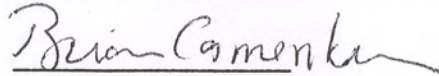
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8/23/12

Certificate of Service

I certify on August 27, 2012, I served a true copy of the above pleading to the Plaintiffs by mail and to the Attorney General in person.



Brian Camenker