

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
TWELFTH DIVISION

MCKESSON MEDICAL-SURGICAL, INC.

PLAINTIFF

vs.

Case No. 60cv-17-1960

STATE OF ARKANSAS;  
ARKANSAS DEPARTMENT OF CORRECTION;  
ASA HUTCHINSON, in his official capacity as  
Governor of Arkansas; and  
WENDY KELLEY, in her official capacity as  
Director of the Arkansas Department of Correction

DEFENDANTS

**DEFENDANTS' MOTION FOR CHANGE OF VENUE**

The State of Arkansas, the Arkansas Department of Correction, Asa Hutchinson, in his official capacity as Governor of Arkansas, and Wendy Kelley, in her official capacity as ADC Director, state as follows for their Motion for Change of Venue:

1. On Friday, April 14, 2017, Plaintiff McKesson Medical-Surgical, Inc. filed a complaint in the Circuit Court of Pulaski County (Case No. 60cv-17-1921). In that case, Circuit Judge Wendell Griffen entered a temporary restraining order without notice to the Defendants or an opportunity for the Defendants to respond. Judge Griffen's TRO was subsequently vacated by the Arkansas Supreme Court. In a separate per curiam opinion, the Arkansas Supreme Court barred Judge Griffen from presiding over cases involving the death penalty or the State's execution protocol in the future.

2. On Saturday, April 15, 2015, McKesson reversed its position and moved to vacate the temporary restraining order that it had sought (and received) and to nonsuit the original complaint in Case No. 60cv-17-1921.

3. April 18, 2017, after the case was reassigned under the Supreme Court’s per curiam, this Court (Circuit Judge Alice Gray) dismissed Case No. 60cv-17-1921 as requested by McKesson.

4. Within *minutes* of the dismissal of Case No. 60cv-17-1921 on April 18, McKesson filed a substantively identical complaint in this case and requested the same relief, including another temporary restraining order.

5. Pursuant to Act 967 of 2017, this case must be immediately transferred to the Circuit Court of Faulkner County, Arkansas.

6. As relevant here, Act 967 of 2017 provides that, if no plaintiff in an action “is a resident of Arkansas,” then “[a] defendant in a civil action under § 16-60-104(3) may obtain an order for a change of venue by motion requesting a transfer to . . . any county in the state of Arkansas.” Act 967 of 2017, § 2(e)(1). When requested, transfer is mandatory. *See id.* at § (e)(2) (“The venue of the civil action ***shall be changed*** upon a showing that the proposed transferee county is a proper venue as set forth in this subsection.”) (emphasis added). Those provisions went into immediate effect upon passage. *See id.* at § 4.

7. Venue is proper in the Circuit Court of Faulkner County because no plaintiff in this case is a citizen of the State of Arkansas—McKesson is a Virginia company with its principal place of business in Virginia according to the complaint, ¶ 1—and this action was commenced against the State and officers of the State in their official capacity.

8. Under the mandatory provisions of Act 967 of 2017, the Defendants respectfully submit that the Court must immediately transfer venue to the Circuit Court of Faulkner County.

WHEREFORE, the Defendants pray that their Motion for Change of Venue be granted immediately, and for all other just and appropriate relief.

Respectfully submitted,

Leslie Rutledge  
Arkansas Attorney General

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**CERTIFICATE OF SERVICE**

I, Lee Rudofsky, Solicitor General, do hereby certify that on this 18th day of April, 2017, I filed the foregoing document via the eFlex electronic filing system, and I served a copy on the following via email:

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/s/ Lee P. Rudofsky