

but failed – to designate White Plains as the forum pursuant to Local Rule 21(a)(1) in the first place. Now that various challenges to the litigation *ab initio* apparently have been resolved and the matter set for trial, the question of venue becomes a timely one.

The interest of justice best would be served by reassigning this case to White Plains. Outside of certain witnesses employed by the federal government in Washington and elsewhere, it appears that nearly all of the factual witnesses in this matter live or work in the County or points north of it.¹ (Aff. of Stuart M. Gerson in Supp. of Def.’s Mot. to Reassign Case to White Plains Courthouse (“Gerson Aff.”) ¶ 2.) Many of these witnesses serve in a senior official capacity in the County government. (*Id.* ¶ 3.) Not only is it necessary for them to attend the trial as well as testify in it, but they still must perform their official duties at the seat of County government. (*Id.*) It would be a hardship for them and for the County for these witnesses to have to travel to Foley Square to attend or to testify at the trial. (*Id.*) The responsibilities of these witnesses – who will likely include County Executive Andrew Spano, Deputy Commissioner for Housing and Community Development Norma Drummond, Commissioner of Planning Gerard Mulligan, Executive Director of the Human Rights Commission Delores Brathwaite, and Chairman of the Housing Opportunity Commission George Raymond – require extensive and daily personal attention. (*Id.*) County Executive Spano, who signed the certifications at issue, is the County’s highest-ranking official. (*Id.* ¶ 4.) Drummond’s duties include managing the administration of the programs at issue in this case, including the government submissions associated with them. (*Id.* ¶ 5.) Both of these witnesses will be critical to the issues to be tried, both have demanding ongoing responsibilities for the County, and both live north of even White Plains. (*Id.* ¶¶ 4-5.)

¹ Relator is located in New York and it is possible that its Executive Director, Craig Gurian, or its former employee, Richard Bellman, will testify at trial. These witnesses, however, should have little to say about the remaining issues to be tried.

Notably, the depositions of several of the above-listed witnesses, including County Executive Spano, Drummond, and Raymond, occurred within the County.² (*Id.* ¶ 6.) Were the trial of this matter to remain in Foley Square, it might take as much as three hours per day for County officials to commute from the County's offices to Foley Square and back to participate at trial, which would impose an undue hardship upon the County. (*Id.* ¶ 7.) In contrast, the White Plains Courthouse is a five-minute walk from the County's offices. (*Id.*)

Accordingly, in the interest of justice and sound judicial administration, the Court should exercise its broad discretion and reassign this case for trial in its proper forum, the White Plains Courthouse.

Argument

This action, concerning the County's commitment to fair housing, is most appropriately determined in the White Plains Courthouse as opposed to Foley Square.

A. Standards for Designation and Assignment to the White Plains Courthouse

Rules 21 and 22 of the Local Rules provide that a civil case shall be designated for assignment to White Plains if “[t]he claim arose in whole or in major part in the Counties of Dutchess, Orange, Putnam, Rockland, Sullivan and Westchester (the “Northern Counties”) and at least one of the parties resides in the Northern Counties.” Moreover, a case should be reassigned from Manhattan to White Plains “in the interest of justice or sound judicial administration.” Accordingly, as in the instant case, where a claim arises in the Northern Counties and a party is located in the Northern Counties, reassignment from Manhattan to White Plains is proper. *See Henry v. Wyeth Pharm., Inc.*, No. 05 Civ. 8106, 2007 WL 2230096, at *1 (S.D.N.Y. July 30, 2007) (case that should have initially been designated to White Plains reassigned *sua sponte* following disposition of summary judgment).

² Michael Lipkin, a former County Planning Department employee and likely witness, lives and works in Rockland County. (*Id.* ¶ 2.)

B. This Matter Should be Reassigned to White Plains for Trial**1. Reassignment is Appropriate as All Claims Arose in Westchester**

Reassignment to White Plains for trial is appropriate here as all of Relator's claims arose in the County and this case has no nexus to Manhattan. *See Cardenas v. Premier Investigations, Inc.*, No. 04 Civ. 7387, 2004 WL 2782955 (S.D.N.Y. December 2, 2004) (reassignment appropriate where claims arose out of plaintiffs' employment in defendant's White Plains office); *Nixon v. Diehm*, No. 99 Civ. 9843, 2000 WL 280009, at *3 (S.D.N.Y. March 14, 2000) (reassignment appropriate where events giving rise to plaintiff's claims and witnesses all located in Northern Counties); *Bruce v. City of Middletown*, No. 88 Civ. 1846, 1989 WL 140276, at *1 (S.D.N.Y. November 15, 1989) (reassignment appropriate where "case's operative facts have no connection to the chosen forum" of Manhattan). Clearly, this case would more appropriately be adjudicated in White Plains.

2. Reassignment is Proper as Nearly All Witnesses Reside and/or Work in Westchester

Nearly all of the County's witnesses reside and/or work in the County. As such, County officials would have to travel as much as three additional hours per day to participate in the trial at Foley Square, preventing them from attending to urgent County business requiring their daily attention. In contrast, the White Plains Courthouse is only a five-minute walk from the County's offices, allowing officials to participate in trial *and* attend to official duties as needed. To conduct trial in Manhattan under these circumstances would unduly "impose administrative and financial hardships" on the County, including the "additional time and costs for [County] staff to travel to testify at a trial in Manhattan, rather than White Plains." *Nixon*, 2000 WL 280009, at *2. The unduly burdensome nature of travel to Foley Square is further evidenced by the fact that many of the depositions of County witnesses took place in Westchester.

A Foley Square trial location would also force County officials to take significant amounts of time away from official duties and redistribute their workloads, also causing undue hardships. *See, e.g., id.* (amongst other factors, redistribution of workload caused by Manhattan trial location “would impose a hardship on the [County] Facility”); *Gache v. Town/Village of Harrison*, No. 95 Civ. 3485, 1995 WL 380175, at *1 (S.D.N.Y. June 27, 1995) (reassignment appropriate in case where Northern County town officials implicated in lawsuit). Where the “sources of proof are located significantly closer to White Plains,” reassignment is entirely necessary and proper. *Bruce*, 1989 WL 140276, at *2.

3. Reassignment to White Plains for Trial Is In the Interests of Justice

The County did not make this motion earlier in the litigation because it reasonably expected this litigation to be resolved by dispositive motion or settlement. While Courts have sometimes declined reassignment under the Local Rules where an extensive amount of time or activity has passed since the complaint’s filing, reassignment to White Plains is, for the reasons already discussed, nonetheless “in the interests of justice.” *See, e.g., Pension Benefit Guar. Corp. v. Viking Food Serv., Inc.*, No. 93 Civ. 6837, 1994 WL 702042 (S.D.N.Y. December 14, 1994) (transfer to White Plains over one year after filing of complaint appropriate as claim arose there and witnesses reside there). In matters such as this, where the case initially “was subject to mandatory designation to White Plains,” Courts have utilized Rule 22’s broad discretionary standard to reassign cases *sua sponte* to White Plains, even *after* disposition of summary judgment. *See Wyeth Pharm., Inc.*, 2007 WL 2230096, at *1 (actions giving rise to plaintiff’s claims and defendant’s facilities all located in Northern Counties).

In any event, the County recognizes that your Honor has developed familiarity with the factual and legal issues in this litigation by virtue of the dispositive motion practice and other matters that have arisen throughout the course of this litigation. The County’s request for

the trial to be held in White Plains and your Honor's continued involvement as the judge presiding over this litigation are by no means mutually exclusive.

Conclusion

In short, the interest of justice weighs decidedly in favor of this matter's transfer to White Plains, where all of the claims arose, nearly all of the witnesses live and/or work, and where there is a direct nexus with the litigation. White Plains is not only the most fair forum for trial of this matter, it is the only appropriate forum. For the reasons stated above, the County respectfully requests that the Court issue an order reassigning the action to the White Plains Courthouse and granting such other relief it deems just and proper.

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Respectfully submitted,

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