

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

MICHAEL E. MANN, Ph.D.,	)	
	)	
Plaintiff,	)	Case No. 2012 CA 008263 B
	)	Calendar No.: 3
	)	Judge: Fredrick H. Weisberg
	)	Next event: None
v.	)	
	)	
NATIONAL REVIEW, INC., <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

**PLAINTIFF’S PRAECIPE IN RESPONSE TO  
DEFENDANTS’ JOINT REQUEST FOR STATUS CONFERENCE**

Plaintiff Michael E. Mann, Ph.D. (“Dr. Mann”) respectfully submits this response to Defendants’ December 27, 2013 Joint Request for Status Conference. Plaintiff does not oppose Defendants’ request for a status conference, but submits this response to address Defendants’ contention that the law of the case doctrine does not apply to this Court’s July 2013 Orders denying Defendants’ motions to dismiss the complaint in view of the dismissal of Defendants’ appeal by the D.C. Court of Appeals.

The law of the case doctrine bars a trial court from reconsidering the same question of law that was presented to and decided by another court of coordinate jurisdiction. *Kaplan v. Pointer*, 501 A.2d 1269, 1270 (D.C. 1985). The doctrine serves judicial efficiency by “discouraging ‘judge-shopping’ and multiple attempts to prevail on a single question.” *Id.* (quoting *Kritsidimas v. Sheskin*, 411 A.2d 370, 371 (D.C. 1989)). The doctrine is applicable when: (1) the motion under consideration is substantially similar to one already raised before, and considered by, the first court; (2) the first court’s ruling is sufficiently final; and (3) the prior ruling is not clearly erroneous in light of newly presented facts or a change of substantive law.)

*Id.* In the July 2013 Orders, Judge Natalia Combs-Greene considered and denied Defendants' arguments in support of dismissal of what are Counts I through VI of the Amended Complaint.<sup>1</sup> Judge Combs-Greene subsequently denied Defendants' motions to reconsider the July 2013 Orders.<sup>2</sup> Any arguments that Defendants would make to dismiss Counts I through VI are identical to those already rejected by this Court. *See, e.g.,* NRO Defendants' Mot. to Dismiss Amended Compl. (July 24, 2013), at 2 ("Defendants Mark Steyn and National Review, Inc. merely renew the arguments already stated on [Counts I through VI]"). The law of the case doctrine prevents the Court from revisiting identical arguments unless the July 2013 Orders were not "sufficiently final" or were "clearly erroneous." Neither circumstance is present here. Accordingly, the law of the case bars this Court from reconsidering (for a second time), the denial of Defendants' motions to dismiss Counts I through VI.

Moreover, contrary to Defendants' assertions, the Court of Appeals did not "vacate" this Court's July Orders denying Defendants' initial motions to dismiss. Rather, the Court of Appeals merely dismissed Defendants' premature appeal as "moot." *See* Order, *Steyn v. Mann*, Nos. 13-CV-1043, -1044, at 2 (Dec. 19, 2013). If the Court of Appeals had intended to vacate this Court's prior orders, it would have so stated in its order. It did not; therefore, the July 2013 Orders are still in force and operate as the law of the case.

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<sup>1</sup> Count VII of the Amended Complaint challenges Defendants' statement that Dr. Mann was "the Jerry Sandusky of climate science" as defamatory. This Court has not ruled on that count.

<sup>2</sup> Judge Combs-Greene denied the motions for reconsideration *after* granting Dr. Mann's motion to amend the complaint.

DATED: January 10, 2014

Respectfully submitted,

/s/ John B. Williams

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 10th day of January 2014, I caused a copy of the foregoing Plaintiff's Response to Defendants' Joint Request for Status Conference to be served via CaseFileXpress on the following:

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