

Judge Transfers Penn State Hazing Practices Case From Phila.

Max Mitchell, The Legal Intelligencer

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A lawsuit alleging Penn State allowed extreme hazing practices on its campus has been ordered to be transferred from the Philadelphia Court of Common Pleas.

Philadelphia Court of Common Pleas Judge Arnold L. New granted Penn State's motion to transfer the case *Vivenzio v. Pennsylvania State University* on Tuesday. The university, along with fraternity Kappa Delta Rho, were sued last year by James Vivenzio for allegedly allowing hazing practices, such as "force-feeding [fraternity pledges] bucketfuls of liquor mixed with urine," to occur.

New's motion said the plaintiff can refile the matter in either Dauphin or Centre County.

In September, Penn State filed a motion seeking to transfer the case to Centre County, which is the county where the university's campus sits. The defendant fraternity, Kappa Delta Rho, and the fraternity alumni organization, Zeta Alumni of Kappa Delta Rho, joined Penn State's transfer motion, and also raised the issue in preliminary objections they filed in August.

Attorney Aaron Freiwald, who is representing Vivenzio, said he will evaluate the options regarding the ruling.

"This case is absolutely compelling in the outrageousness of the conduct, and that will be true no matter what county this case is litigated in," he said.

Klehr Harrison Harvey Branzburg attorney Gaetano P. Piccirilli, who represents the fraternity, said he agreed with New's ruling.

"Based upon the foundation the defendants were able to build to show that Philadelphia County was the wrong venue for various reasons, including the location of witnesses, the decision to transfer the case was the right decision," he said in an emailed statement. "We have always maintained that the case did not belong in the Philadelphia courts. Now we have been validated."

A spokeswoman for Penn State said the university was pleased with the ruling.

Vivenzio's suit alleged negligence, battery, unlawful furnishing of alcohol to a minor, furnishing alcohol to one obviously intoxicated, false imprisonment, fraud and conversion.

Along with being force-fed liquor, Vivenzio also claimed that he informed the university about the creation of a Facebook page showing sexual assaults and misconduct perpetrated at the fraternity, but the school failed to act on the information.

According to Vivenzio's complaint, he disclosed the fraternity's secret Facebook page to local police and a senior investigator from the Penn State Office of Student Conduct in April 2014. He also told the Penn State investigator that he had evidence of sexual assaults at the fraternity, the complaint said.

In its motion seeking transfer, Penn State argued the venue was improper because all of the alleged hazing occurred in Centre County, and the plaintiff does not live in Philadelphia, but instead lives in Virginia. The motion further noted that none of the defendants are located in Philadelphia, and none of the proposed witnesses live or work in Philadelphia, either.

"State College is approximately 10 miles from the Centre County Court of Common Pleas. It is more than 190 miles from this court," said the motion, which James A. Keller of Saul Ewing filed for Penn State.

The fraternity's preliminary objections filed Aug. 28 raised similar concerns over the venue, and said both the public and private factors weighed in favor of transfer.

Vivenzio replied in October by citing Penn State's website and advertising campaigns, and arguing the defendants failed to prove Philadelphia would be a vexatious or oppressive venue.

"The fact that defendant, by its own choosing, promotes that Penn State lives in Philadelphia and that Penn State is in Philadelphia, contradicts defendant's claim that Philadelphia is oppressive and vexatious," the motion said. "Requiring defendant to litigate an action where it admittedly 'lives,' is not oppressive."

The filing further contended that numerous witnesses, including school trustees and hazing task force members, are located in or near Philadelphia.

In its preliminary objections filed Aug. 31, Penn State had also contended that it cannot be held liable for hazing at a private fraternity that occurred on private property. The filing also argued the activities had been kept secret from university employees, and the school did not assume a duty simply by instituting an anti-hazing policy and investigating allegations of hazing.

The fraternity's motion argued the national organization did not owe Vivenzio a duty to control the members of the local chapter, and the claims against it were not properly pleaded and should be dismissed.

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