

Veterans

Rebel Post 5888 will go to federal court Tuesday

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SAN FRANCISCO — A federal court judge set Tuesday as the hearing date to determine if constitutional issues, including First Amendment rights, are involved in the ouster of a local Veterans of Foreign Wars post.

U.S. District Judge Marilyn Hall Patel set the hearing date after the national VFW asked the case be moved to federal court.

Local Post 5888 was ousted from the national organization after it sent a letter to Nicaraguan officials supporting a policy of self-determination in that country.

A hearing on the post's suit challenging the ouster was to have been held Thursday in a local Superior Court, but that hearing was canceled after the national VFW's request.

"This whole thing was a charade and stalling tactic by the national VFW," said Eric Schenk, attorney for Post 5888. "They're trying to put us off as long as possible. It's also a bleeding tactic to make it more expensive for us."

In papers filed last week with Patel, the national VFW said the case belonged in federal court because Post 5888 "bases its action on a claim of right arising under the constitutional laws of the United States." The VFW did not say which laws or constitutional provisions were involved.

However, the post did not argue that its constitutional rights were violated when it went to Superior Court on March 18, the day it received its letter of expulsion. Instead, the post cited California corporate law to challenge the VFW's authority under its own bylaws to revoke the post's charter.

At the VFW's Kansas City, Mo., headquarters, Assistant Adjutant General Ed Burnham said the group wanted the case moved to federal court, in part because the VFW is a congressionally chartered organization.

"It's a simple case," he said. "The post violated the bylaws and its charter was revoked. The post does not exist."

Post 5888 has little money to fight a protracted legal battle against the wealthy VFW, Schenk said.

Schenk said he will raise the issue of jurisdiction to Judge Patel, and that if she rules that the case should be moved to federal court because of constitutional issues, "...we have a much better chance of getting the ACLU involved."

The American Civil Liberties Union had told Schenk that it would consider entering the case if constitutional issues were involved, but would stay out of the case while it was being contested under corporate law.