

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 4:05-cv-33 (TSL/JMR)
)	
)	
IKE BROWN, individually, and in his)	
official capacities as Chairman of Noxubee)	
County Democratic Executive Committee)	
and Superintendent of Democratic Primary)	
Elections; NOXUBEE COUNTY)	
DEMOCRATIC EXECUTIVE)	
COMMITTEE; CARL MICKENS,)	
individually, and in his official capacities)	
as the Circuit Clerk of Noxubee County,)	
Superintendent of Elections, Administrator)	
of absentee ballots and Registrar of voters;)	
the NOXUBEE COUNTY ELECTION)	
COMMISSION; NOXUBEE COUNTY,)	
MISSISSIPPI; and those acting in concert,)	
)	
Defendants.)	
<hr/>		

**REBUTTAL MEMORANDUM OF THE UNITED STATES IN SUPPORT OF
PLAINTIFF’S MOTION TO STRIKE DEFENDANTS IKE BROWN’S AND THE
NOXUBEE COUNTY DEMOCRATIC EXECUTIVE COMMITTEE’S RE-
DESIGNATION OF EXPERT WITNESS**

The Defendants Ike Brown and the Noxubee County Democratic Executive Committee (“Defendants”) have noted their opposition to the motion to strike their expert re-designation of an expert witness. The opposition notes no grounds to oppose the motion, save for reference to an affidavit by the Defendant claiming his pro bono status justifies denying the motion. The opposition does not address any of the factors

enumerated in Hamburger v. State Farm Mut. Auto. Ins. Co., 361 F.3d 875, 883 (5th Cir. 2004).

Defendant Brown provides an affidavit arguing his lawyer's pro bono status justified non-compliance with orders of this Court. Yet, pro bono status is irrelevant. Neither the Federal Rules of Civil Procedure nor Local Rules provide sanctuary for litigants who pay no fee. Nor do the Mississippi Rules of Professional Conduct relax obligations of diligence when counsel receives no fee. See, e.g., Mississippi Rules of Professional Conduct, Rule 1.3.

Counsel for defendants

remain subject to the same general norms as other lawyers. Courts cannot be expected to base codes of proper conduct on whether, or how much, counsel is paid for his or her work. We think that a system which attempted to encourage lawyers to handle civil rights cases pro bono by exempting them from the rules that other attorneys must follow would be not only unwise and unworkable, but perverse.

Foster v. Mydas Associates, Inc., 943 F.2d 139, 144 (1st Cir. 1991). See also Porter County Chapter of Izaak Walton League of America, Inc. v. Train, 548 F.2d 1298, 1301 (7th Cir. 1977) (pro bono status has no relevance to counsel's duty to comply with rules of court). Moreover, this Court on May 10, 2006 refused to justify a trial delay to a time uncertain and rejected pro bono status as a reason to delay the trial indefinitely. "Nor does the court believe that counsel's *pro bono* status . . . [or a pending deposition] justify a lengthy extension of this deadline." (Order, May 10, 2006).

Lastly, the United States argued that the Defendants' request in July 2006 for a trial delay to conduct more discovery was done for the specious purpose of only attempting to re-designate the expert. The United States notes that the refutation of this claim is only in the form of an affidavit by the Defendant Ike Brown. The Defendant

Brown admits under oath that the expert report was not available at the time the trial delay was sought and it was not known when it would be available. (Brown Aff. at ¶5). This admission bolsters the argument of the Plaintiff as it infers a motive to seek a trial delay apart from conducting additional discovery. The Defendant Brown also disagrees with the argument that the motion to delay the trial for the purpose of conducting additional discovery, when no discovery was subsequently conducted, was done for the subterfuge of re-designating the expert. *Id.*

It is important to note that counsel for Mr. Brown did not represent to this Court the substance of the claims contained in Paragraph Five of Defendant Brown's affidavit. Defendant Brown alone disputes the assertion that the trial continuance was sought for the false pretense of re-designating an expert out of time. Nor has counsel for Defendant Brown filed a memorandum of points and authorities refuting the four justifications for striking the re-designation made in the supporting memorandum filed by the United States for this motion. Instead, the Defendant Brown alone provides an affidavit containing purported grounds and arguments to deny the motion. Finally, the United States submits that the Defendant Brown is unqualified to rebut on behalf of all parties that such a false pretense existed to delay the trial. He speaks for himself and no more.

Conclusion

The United States asks this Court to strike the re-designation of the Defendants' expert.

Respectfully Submitted,

DUNN O. LAMPTON

JOHN K. TANNER

United States Attorney
Southern District of
Mississippi

Chief, Voting Section

s/ J. Christian Adams
CHRISTOPHER COATES
Principal Deputy Chief, Voting Section
J. CHRISTIAN ADAMS
JOSHUA L. ROGERS
Attorneys, Voting Section
Department of Justice
Civil Rights Division
Voting Section
950 Pennsylvania Ave. NW
Room 7255 - NWB
Washington, D.C. 20530
(202) 616-4227

CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2006 I electronically filed the foregoing Rebuttal Memorandum of the United States in Support of Plaintiff's Motion to Strike Defendants Ike Brown's and the Noxubee County Democratic Executive Committee's Re-Designation of Expert Witness using the Court's ECF system which sent notification of such filing to Wilbur O. Colom, Esq. and Edward L. Pleasants, III, of the Colom Law Firm, LLC, 200 6th Street, North, Suite 102, Columbus, Mississippi, 39701, Ellis Turnage, Esq., Post Office Box 216, 108 North Pearman Avenue, Cleveland, Mississippi, 38732, and, Christopher D. Hemphill, Esq., Dunn, Webb and Hemphill, P.A., 214 5th Street South, Columbus, Mississippi, 39701. With notice to be delivered by other means to:

Dunn Lampton
U. S. ATTORNEY'S OFFICE
188 E. Capitol St., Suite 500
Jackson, MS 39201

s/J.Christian Adams
J. Christian Adams