

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TEXAS DEMOCRATIC PARTY; et al.

Plaintiffs,

vs.

DALLAS COUNTY, TEXAS; et al.

Defendants.

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Cause No. 08-CV-02117-P

**PLAINTIFFS’ RESPONSE TO DEFENDANTS’
OPPOSITION TO PLAINTIFFS’ BILL OF COSTS
PURSUANT TO RULE 54**

TO THE HONORABLE JUDGES OF SAID COURT:

COMES NOW, Plaintiffs, TEXAS DEMOCRATIC PARTY and BOYD L. RICHIE, in his capacity as Chairman of the Texas Democratic Party (hereinafter referred to as “Plaintiffs”) and files this their Response to Defendants’ Opposition to Plaintiffs’ Bill of Costs Pursuant to Rule 54, and would respectfully show the Court as follows:

I.

INTRODUCTION

1. Defendants object to Plaintiffs’ Bill of Costs solely on the basis of the form of the Bill and the amount of the costs sought. The total amount of costs sought by Plaintiffs is \$856.76. Of this amount \$350 were spent on fees with the clerk. Defendants do not dispute this amount. The remaining two categories of expenses claimed are

Service of Process Fees in the amount of \$140 and Copy Expenses in the amount of \$366.76. It is these later two categories of expenses Defendants contest.

II.

RESPONSE TO OBJECTION

2. The first objection lodged by Defendant to Plaintiffs' Bill of Costs concerns an alleged lack of itemization for the requested costs. *See* Doc. #49 at p. 2. Counsel for Defendants must have overlooked the itemization, because one was included in each of the fee bills for Plaintiffs' counsel. Each of the fee bills, at the end, contained an itemization by date of each of and every expense incurred in the case. These fees bills were attached in one filing of the same date. *See* Doc. # 47-2 at p. 13 and Doc. #47-3 at p.3. Both documents were attached to Plaintiffs Memorandum in Support of its Motion for Attorneys' Fees and Costs Pursuant to Rule 54. *See* Doc. #47. Accordingly, an itemization of all costs was included with the Bill of Costs filed by the clerk in Doc. #47.

III.

SERVICE FEES

3. Next, Defendants complain they should not pay Plaintiffs' fees for service of summons. They make three objections for payment of service fees. First they object on the basis that Defendants were not asked to waive service of process. Second they object for a lack of itemization and for claiming service fees on Defendants dismissed. Finally, Defendants complain of the use of a private process server.

4. On the first point, Defendants do not certify they would have accepted service of process in their Motion which should lead to the denial of this alleged defense. Even had Defendants certified that they would have accepted service, it was impossible to request service agreement by Defendants when the case filed. At the time the case was filed a manual recount was underway in Dallas County. It was believed an Order of this Court would be immediately required to stop manual recount teams from employing new election practices that had not been pre-cleared. Because of state election deadlines requiring the certification of a winner upon completion of a manual recount, there was no time to request from Defendants waiver of service. The Original Complaint requested emergency relief.

5. As for obtaining service on Defendants dismissed, these Defendants were necessary had Plaintiffs required relief concerning the manual recount underway when the lawsuit was filed. These Defendants were later dismissed when it was determined relief concerning the manual recount underway was moot. It was impossible for Plaintiffs to know how the activities would have unfolded when they chose the main Defendants and sought service upon them. The reality is, had the Defendants not employed two election practices without pre-clearance, this lawsuit would not have been necessary. The manual recount would have gone forward under properly pre-cleared procedures. Instead, in the middle of an election, Defendants chose to adopt an entirely different manual recount procedure which necessitated this immediate lawsuit and service.

6. Next, as discussed above, Plaintiffs attached an itemization breaking down for each fee for the service on each Defendant. *See* Doc. #47-2 at p. 13. Therefore Defendants have an appropriate itemization. Finally, service was obtained through a private process server. A fact Defendants had knowledge of since they received this service. Therefore, (1) it is unnecessary for Plaintiffs to state a private process server in their application and (2) the failure to so state caused no prejudice to Defendants since they should have already had knowledge.

7. On Defendants final point, Plaintiffs did employ private process servers to serve summons, however the authority cited by Defendants for the proposition that such fees are non-reimbursable is anything but conclusive. The first case cited by the Defendants of *Cypress-Fairbanks Indp. Sch. Dist. v. Michael F.*, 118 F.3d 245, 257 (5th Cir. 1997) does not stand for the proposition that private process server costs are not recoverable. That case merely holds that when the defendant has previously agreed to accept service, a plaintiff cannot obtain private processor fees for performing service despite the agreement. *See id.* As for the second authority cited by Defendants of *Interstate Contracting Corp. v. City of Dallas*, no. civ. a. 3:98 Civ. 2913-M, 2002 wl 23667, at *2 (N.D. Tex. Jan. 31, 2002), this case also does not help Defendants. Though it is true this case finds private process server fees to reimbursable, the amount of fees requested was \$5,591.72. These were fees to serve subpoenas and not summons. Given the extraordinary amount and the fact the amount was paid to a private process server, well in excess of public providers, it is no surprise the Northern District Magistrate Judge

ruled that they were not available to a prevailing party. Nevertheless, considering the reasonable amount of the service costs involved, this case is proper for award of private service fees.

IV.

COPY CHARGES

8. The final argument Defendants make against Plaintiffs' Bill of Costs concern requests for copy expenses. Plaintiffs have requested copy expenses in the amount of \$366.76. Defendants cite numerous authorities denying a prevailing party copy costs because of failure to categorize the copies. However, the cases cited include copy expenses in thousands or tens of thousands of dollars. Here, Plaintiffs seek only a few hundred dollars. Those charges had been itemized by date in the invoices attached. The invoices are sufficiently detailed for the Court to determine whether Plaintiffs are entitled to these copy expenses.

9. This case involves more than 50 filed documents. Much of the briefing was voluminous and included numerous exhibits, including electronic records. The copy costs requested by Plaintiffs are minimal compared to the number of pages filed with the Court. Defendants do not offer their itemization of copy expenses. In all likelihood it is far in excess of what Plaintiffs have requested. If the attorneys' fees wouldn't far exceed the amount of money here in dispute, Plaintiffs would send discovery to Defendants for their copy expenses as well as a Freedom of Information Act Request to Dallas County for the invoices received from Defense counsel to date. Note, Defense counsel does not

complain that \$366.76 of copy costs is excessive. Such a claim would be frivolous for the volume of litigation involved in this case. Defendants essentially require Plaintiffs to itemize each and every copy made in this case. Though that may be helpful when thousands of dollars of copies are requested, it is burdensome and unnecessary for the amount requested in this case.

V.

CONCLUSION

10. For these reasons, Plaintiffs, Texas Democratic Party and Boyd L. Richie, in his Capacity as Chairman of the Texas Democratic Party, ask the court to award them attorneys' fees and costs.

Dated this 18th day of January, 2010.

Respectfully submitted,

TEXAS DEMOCRATIC PARTY and
BOYD L. RICHIE, in his capacity as
Chairman of the Texas Democratic Party

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CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2010, I electronically filed the foregoing document with the Clerk of the United States District Court, Northern District of Texas, Dallas Division, using the electronic case filing system of the Court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means:

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