

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

TEXAS DEMOCRATIC PARTY; §  
BOYD L. RICHIE, in his capacity as §  
Chairman of the Texas Democratic §  
Party; FRANK JOSEPH; and BRETT §  
ROSENTHAL §

*Plaintiffs,*

vs.

Cause No. 08-CV-02117-P

DALLAS COUNTY, TEXAS; and §  
BRUCE SHERBET, in his capacity as §  
Election Administrator for Dallas §  
County, Texas, §

*Defendants.*

**PLAINTIFFS’ RESPONSE TO DEFENDANTS’ MOTION TO STRIKE**  
**AND**  
**REPLY TO DEFENDANTS’ OBJECTIONS TO**  
**PLAINTIFFS’ RESPONSE TO THE COURT’S ATTORNEYS’ FEES ORDER**

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’ DALLAS COUNTY, TEXAS AND BRUCE SHERBET, IN HIS CAPACITY AS ELECTION ADMINISTRATOR FOR DALLAS COUNTY, TEXAS (hereinafter referred to as “Defendants”) Motion to Strike and Reply to Defendants’ Objections to Plaintiffs’

Response to the Court's Attorneys' Fees Order, and would respectfully show the Court as follows:

I.

**DEFENDANTS RESPONSE WAS TIMELY**

The Court entered an Order September 29, 2010 on attorneys' fees in this case that required Plaintiffs to amend their fee affidavit. The Order provided Plaintiffs 20 days to file such pleadings. Defendants argue that Plaintiffs' Request for Attorneys Fees should be denied in its entirety because Plaintiffs did not file their Amended Fee Affidavits until October 21, 2010, two days after the 20 day deadline provided for in the Order. Defendants failed to explain how the original Attorneys' Fees Affidavit, undeniably filed timely, cannot continue to support the fee requests.

Regardless, Plaintiffs had a good faith basis for filing their Fee Affidavits when they did. Attached hereto as Exhibit A is the email received from the Court concerning the Order referenced above. The Court's Order was not entered by the Court until October 1, 2010 at 8:38 a.m. central standard time. Plaintiffs calculated the 20 day deadline from October 1, 2010, because that was the date the Order was entered. Admittedly, after receiving Defendant's Motion, Plaintiff's counsel realized the Order had been signed on September 29, 2010. In short, Plaintiff's counsel erroneously calendared the deadline based upon the email received from the Court and not from the date on the Order. Counsel overlooked the fact that these dates were different.

Nevertheless, Plaintiffs' counsel dutifully responded to the Court's Order, within the 20 days deadline that was reasonably calculated. To the extent that this does not meet the Court's requirements, Plaintiffs' hereby seek leave from the Court to file its response two days late on the basis of the good faith justification stated above.

Defendants have failed to plead, prove or allege any prejudice for the alleged late filing. Furthermore, it should be noted that even if the Amended Affidavits are rejected, the Court could enter a fee award based upon the earlier, timely filed Fee Affidavits, albeit with the reductions the Court has noted in its Order.

Plaintiffs pray the Court accept their Amended Fee Affidavits as timely and/or allow leave of Court given the discrepancy in the Court's records as described above.

## II.

### **MOTION TO STRIKE DEFENDANT'S DALLAS COUNTY'S NEW OBJECTIONS**

Defendant Dallas County's Objections on the issue of attorneys' fees is groundless and in bad faith. Defendant Dallas County essentially admits they have, for months, ignored properly served requests for production seeking the bills incurred by Dallas County in defending this case. Obviously these bills are very relevant in determining what are reasonable and necessary attorneys' fees in this case. Clearly Dallas County refuses to produce these bills because it would conclusively prove its frivolous arguments regarding the reasonableness and necessity of Plaintiffs' attorneys' fees. Because that

Dallas County has refused to produce to the Court its attorneys' fees in this case, its latest objections should be stricken.

Furthermore, Dallas County's latest objections should be stricken because the attorneys' fees, counsel time, court time and resources expended pouring over numerous, additional, and frivolous objections to Plaintiffs' attorneys' fees request has now cost both the parties, the court, and Dallas County far in excess of the amount that could be saved.

### III.

#### **PLAINTIFFS' HAVE SUFFICIENTLY REDUCED THEIR BILLING IN COMPLIANCE WITH THE COURT'S ORDER**

Why does Dallas County refuse to present its attorneys' fee billing? Obviously, Dallas County's attorneys know their billing could not survive the same frivolous analysis that Plaintiffs' billing has been subjected to. Plaintiffs could very easily file an extensive brief, setting forth, with detailed footnotes, each and every mistake in Dallas County's attorneys' fees billing.

Plaintiffs have reduced their fee billing sufficiently to reflect the dismissed individual Plaintiffs and the dismissed claims. As determined by the Court in its earlier order, and has been argued by Plaintiffs' counsel, there was very little work performed in this case that would have been eliminated had Plaintiffs not chosen to pursue the individual dismissed claims or the Section 2 claims. To the extent there was duplicative work, Plaintiffs have more than compensated for same in their latest billing records.

As for reduction for conferences with dismissed clients, client conferences occurred by conference call, therefore there is no reduction in time for conferring with clients that were dismissed. Those calls would have taken place for the same duration in any event.

Finally, Plaintiffs are entitled the appellate fees incurred in responding to Dallas County's frivolous appeal. It was impossible for Plaintiffs to make a fee request for appellate fees until such time as Plaintiffs became aware the Defendants were seeking an appeal. Furthermore, any reasonable practitioner would not have foreseen appellate fees in this case since Defendants' appeal is wholly without merit and entirely frivolous. Plaintiffs seek their appellate fees to date and seek all future incurred appellate fees. Plaintiffs also reserve the right to seek fees under Rule 11 of the Federal Rules of Civil Procedure for filing a groundless and frivolous proceeding.

#### **IV.**

#### **CONCUSSION**

For the foregoing reasons, Plaintiffs pray the Court grant their request for attorneys' fees in its entirety and/or grant leave if necessary.

Dated this 18<sup>th</sup> day of November, 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 November 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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