

STATE OF NEW MEXICO
THIRTEENTH JUDICIAL DISTRICT
COUNTY OF VALENCIA

SOCORRO ELECTRIC COOPERATIVE, INC.,

Plaintiff,

v.

CHARLENE WEST, et al.,

Defendants,

And

No. D1314-CV-2010-849

Judge: Mitchell

By Designation

CHARLES WAGNER, individually, etc.

Cross-Claim Plaintiff,

v.

SOCORRO ELECTRIC COOPERATIVE, INC.,

Et al.,

Cross-Claim Defendants.

MOTION FOR ATTORNEY'S FEES
& SUPPORTING DECLARATION & DOCUMENTS

COMES NOW the undersigned, on behalf of Charlene West and other
defendants and hereby moves the Court for an award of attorney's fees and costs, and
as grounds therefore, states:

1. Plaintiffs sought a declaratory judgment pursuant to Section 44-6-2 (NMSA,
1978);

2. Pursuant to a hearing on the merits of the complaint, held May 18, 2011, the
Court determined that the by-laws challenged by the Plaintiffs were binding upon the

Board of Trustees of the Socorro Electric Cooperative, Inc., as set forth in the Order on Hearing on Partial Merits.

3. All relief requested by the Plaintiff, inconsistent with the Order on Hearing on Partial Merits was denied.

4. In a declaratory judgment action, the court has discretion to award attorney's fees as a well recognized exception to the general rule that attorney's fees must be provided for in the contract or by statute. See Marron v. Wood, 55 N.M. 367, 380, 223 P.2d 1051 (1951) (award of attorney's fees held a proper exercise of discretion in case seeking the determination of the rights of the stockholders and directors of a corporation) (relied on in Carbajal v. Candelaria, 65 N.M. 139, 161, 333 P.2d 1058 (1958); Gregg v. Gardner, 73 N.M. 347, 360, 388 P.2d 68 (1963); and Tarpin v. Smedinghoff, 117 N.M. 598, 601, 874 P.2d 1202 (1994)). See Also Shoe Corp. of America v. C.I.R., 29 T.C. 297, 305 (1957) and Harris Corp. v. C.I.R., 30 T.C. 635, 641 (1958), relying on Marron for the proposition that attorney's fees and other expenses incurred by successful litigants in actions involving internal affairs of a corporation, but where no pecuniary benefit was sought, are recoverable against the corporation.

5. Mr. Lee Deschamps, senior partner of Deschamps & Kortemeier Law Offices, P.C. has represented Charlene West and several other named individual defendants in resisting the relief requested by the Plaintiff. Mr. Deschamps has over 40 years experience as a trial lawyer in both civil and criminal cases. Mr. Deschamps

customarily bills for his time at the rate of \$300.00 per hour. Upon information and belief, Mr. Deschamps' hourly rate is average for the nature of this case and for an attorney with comparable experience.

6. Mr. Deschamps had several meeting with the named defendants and drafted an Answer on behalf of these defendants.

7. Mr. Deschamps attended the Status Conference hearing on Dec. 14, 2010; the Feb. 25, 2011¹⁰ hearing on all pending motions and briefs; and the partial merits hearing on May 18, 2011.

8. Mr. Stephen Kortemeier, junior partner of Deschamps & Kortemeier Law Offices, P.C. has assisted Mr. Deschamps by reviewing, researching and responding to the various motions and by briefing the various issues requested by the Court. Mr. Kortemeier has over 30 years experience as a trial lawyer primarily in civil cases. Mr. Kortemeier customarily bills for his time at the rate of \$300.00 per hour. Upon information and belief, Mr. Kortemeier's hourly rate is average for attorneys with comparable experience in a case of this nature.

9. Mr. Kortemeier researched and drafted: defendants' memorandum on the binding effect without class certification; and a reply memorandum; proposed stipulations; and a brief on the primary issues of relief. Mr. Kortemeier attended the hearing on partial merits on May 18, 2011 and drafted a proposed order thereon.

10. Attached hereto and incorporated herein is a true and accurate copy of the billing for professional services related to the declaratory judgment portion of this litigation, which the undersigned hereby certifies under penalty of perjury as true and correct.

WHEREFORE, Charlene West and the other named defendants, hereby request this court to award them attorneys' fees and costs as stated in the attached exhibit.

Respectfully submitted this 10th day of June, 2011.

Electronically Filed /s/ Stephen K. Kortemeier

Stephen Karl Kortemeier
Deschamps & Kortemeier Law Offices, P.C.
POB 389, Socorro, NM 87801-0389
575-835-2222 / fax: 575-838-2922
Attorney for Charlene West, et al.

CERTIFICATE OF MAILING

The undersigned hereby certifies that on this 10th date of June 2011, a true and correct copy of the foregoing was deposited with the USPS, first class postage prepaid thereon, addressed as follows:

Paul Kennedy / Darin Foster
Kennedy & Han, P.C.
201 12th Street NW
Albuquerque, NM 87102

Dennis Francish
Law Office of Dennis Francish
5400 Lomas NE
Albuquerque, NM 87110

Thomas Fitch
Polly Ann Tausch
Fitch & Tausch LLC
P.O. Box 1647
Socorro, NM 87801

William Ikard
Ikard, Wynne LLP
2801 Via Fortuna
Building 7, Suite 501
Austin, TX 78746

/s/ Shiloh M. Pallante

Deschamps & Kortemeier Law Offices, P.C.

(575) 838-0777

Fax: (575) 838-2922

104 Church St.
PO Box 389
Socorro, NM 8780

Invoice submitted to:

Charlene West
Po Box 98
Lemitar NM 87823

In Reference To: June 13, 2011
D-1314-CV-2010-849 SEC v. Charlene West, et al.

Invoice # 2236

Professional Services

		<u>Hours</u>	<u>Amount</u>
5/26/2010 LD	Meeting with C. West.	0.30	NO CHARGE
7/30/2010 LD	Review file. Draft Answer.	1.92	\$575.00
8/13/2010 SK	Staffed with LD	0.10	NO CHARGE
11/17/2010 SK	Letter regarding new matter.	0.05	NO CHARGE
11/30/2010 LD	Phone call with Ikard re: December Hearing	0.25	\$75.00
12/6/2010 SK	Review Stipulation fro Ikard Wynne and prepare Stipulations.	0.83	\$250.00
12/14/2010 LD	Meeting with Ikard; Court Appearance for Pre-Trial Conference; Travel one way	3.75	\$1,125.00
1/5/2011 SK	Phone call regarding case with Ikard	0.05	\$15.00
SK	Research	0.25	\$75.00
1/6/2011 SK	Research Paragraph six Order Regarding Schedule.	0.33	\$100.00
SK	Phone call with Ikard re: scheduling. Prepared Amended Counterclaim and Motion for Partial Summary Judgment.	0.33	NO CHARGE
SK	Review By-Laws	0.50	\$150.00
1/18/2011 SK	Research and Draft Brief.	2.00	\$600.00
1/24/2011 SK	Review Responses by Fitch by SEC re: binding.	0.25	\$75.00
1/25/2011 SK	Review notes for tape of last hearing - admission by Francish	0.03	\$10.00
2/25/2011 LD	Court Appearance for Hearing in Valencia County on all pending Motions and Briefs. Plus 1 hour travel	2.25	\$675.00
4/12/2011 SK	Draft Response to Brief.	3.00	\$900.00
4/26/2011 SK	Review file for phone conference with Ikard. Phone call regarding case with Jordan re: comm and Ikard Involvement.	0.63	\$190.00
SK	Schedule to Ikard.	0.17	\$50.00
5/10/2011 SK	Meeting with Wagner and LD	0.75	\$225.00
5/18/2011 LD	Preparation for Declaratory Judgment hearing 8:30-9:30	1.00	\$300.00
SK	Review file. Prepare with LD and DD	1.50	\$450.00
LD	Court Appearance for Hearing	2.00	\$600.00
SK	Draft/Prepare Order.	1.00	\$300.00
SK	Meeting with Client.	0.50	\$150.00
5/25/2011 SK	Draft Corrections. Send out Proposed Order	0.42	\$125.00

For professional services rendered

24.17 \$7,015.00

Expense Costs (not taxed)

		<u>Qty</u>	
7/28/2010 SMP	Court filing fee	1	\$6.31
7/29/2010 SMP	Court filing fee	1	\$10.51
7/30/2010 SMP	Court filing fee - Answer	1	\$6.31
8/3/2010 SMP	Court filing fee - Recusal	1	\$6.31

		<u>Qty</u>	<u>Amount</u>
8/10/2010 SMP	Court filing fee - Excusal and Answer	1	\$6.31
8/24/2010 SMP	Court filing fee - Return of Service	1	\$6.31
8/26/2010 SMP	Court filing fee - Return of Service	1	\$6.31
8/27/2010 SMP	Court filing fee - Return of Service	1	\$6.31
9/8/2010 SMP	Court filing fee - Return of Service	1	\$6.31
10/1/2010 SMP	Copying cost	1	\$2.10
	SMP Court filing fee - Excusal	1	\$6.31
1/20/2011 SMP	Court filing fee - Memo Brief	1	\$6.31
2/8/2011 HL	Copying cost - Thirteenth Judicial District Court	1	\$6.53
4/13/2011 SMP	Court filing fee - Response to Brief	1	\$6.00
5/19/2011 HL	Copying cost - Thirteenth Judicial District Court	1	\$7.29
5/20/2011 SMP	Court filing fee - Ikard Affidavit	1	\$6.00
Total additional charges			<hr/> \$101.53
Socorro GR Tax			\$491.05
Total amount of this bill			<hr/> \$7,607.58
Balance due			<hr/> \$7,607.58 <hr/>

Thank you for choosing our law firm for your legal matters. Your prompt payment is appreciated.