

STATE OF NEW MEXICO
COUNTY OF VALENCIA
THIRTEENTH JUDICIAL DISTRICT COURT

No. D-1314-CV-2010-00849
Judge: Albert J. Mitchell, Jr.

THE SOCORRO ELECTRIC COOPERATIVE INC.,

Plaintiff,

vs.

CHARLENE WEST, individually, and
as a member of the Socorro Electric Cooperative, all
UNNAMED MEMBER/OWNERS of the Socorro
Electric Cooperative, Inc. individually, and as
Members of the Socorro Electric Cooperative,
The MOUNTAIN MAIL Newspaper, individually,
and as a member of the Socorro Electric Cooperative,
and the EL DEFENSOR CHIEFTAIN Newspaper,
individually and as a member of the Socorro
Electric Cooperative,

Defendants.

**MOTION FOR ATTORNEYS FEES AND COSTS
(DEFENDANTS FITCH AND TAUSCH)**

Defendants Fitch and Tausch, pursuant to the Court's ruling, move this honorable Court to enter an Order awarding them such attorney's fees and costs as to the Court may seem proper. In support of this motion, said Defendants set forth the following:

1. On June 29, 2010—twelve months ago—the Socorro Electric Cooperative (SEC) filed its complaint against Charlene West and all “unnamed member/owners” of the cooperative.

2. The SEC caused its suit to be filed in Valencia County with notice of the suit to be published; no personal service was made upon its “unknown member/owners.”

3. These Defendants, Thomas G. Fitch and Polly Ann Tausch, are both licensed New Mexico Attorneys—members of Fitch & Tausch, LLC—who customarily read legal notices in their local newspaper.

4. Having read the SEC’s publication and identifying SEC’s attempt to sue all of its members, and receiving numerous frantic calls from SEC members in our office in response to the lawsuit, Fitch and Tausch determined to defend the suit so that the so-called unnamed member/owners would not be defaulted and would prevail upon the charges levied.

5. A motion was promptly filed to challenge the SEC’s complaint and over the next several months six or more requests for hearing were filed; with each request for hearing by Fitch and Tausch, Defendant West and other persons continuously disqualified each and every judge of the Thirteenth Judicial District.

6. While not entering into the defense of this action anticipating remuneration, time records were routinely maintained; the firm has been out of pocket various expenses and has lost billable time which could have been devoted to paying clients. As of the writing of this motion, Fitch & Tausch LLC has incurred mileage expense of \$175.16 and invested 35 hours of time as of the entry of the Court’s Order on June 24, 2011. At normal hourly fees of \$200 per hour, the attorney fees for one of the two attorneys would be \$6,940 plus tax. Even though two attorneys worked on this matter

and attended hearings, only charges for one attorney are presented. An itemized time and expense statement is attached hereto as Exhibit A. Because movants have attempted to perform a community service, they have discounted their fees by 50%.

7. In preparing and filing this motion as requested by the Court, movants are concerned about the source of funds should fees be awarded. While it may be appropriate to award attorney's fees to the prevailing parties—especially considering the ill-advised nature of this suit—it does not seem fair to penalize the Socorro Electric Cooperative which, in essence, would be a charge against the member/owners who are the very persons being sued and who have prevailed.

8. If attorney's fees and costs are awarded, it would seem (in the first place) equitable to charge the person or persons responsible for this ill-advised lawsuit. Primarily this would be, first, the attorney who advised the proceeding, the professional responsible for the suit. Secondly, this would be the Trustees who voted to have the lawsuit prepared and filed.

9. If the Court feels that the first suggestion is not appropriate, the Court might consider charging attorney's fees and costs to the "Member Legal Defense Fund" which movants understand is being held by the law firm of Deschamps & Kortemeier, attorneys for several Defendants, in accordance with Exhibit B, attached hereto. The exhibit was found on the website, www.informedcynic.com, where solicitations for funds (and Defendants) were made.

10. Movants do not wish to see the member/owner's cooperative—which has already paid extensive attorney's fees to prosecute this ill-advised suit—bear additional fees and expenses.

WHEREFORE, Defendants Fitch and Tausch move this honorable Court for an award of fees and costs, but only to the extent that it does not unduly burden the member/owners of the cooperative.

RESPECTFULLY SUBMITTED BY:

Fitch & Tausch, LLC

By: 

Thomas G. Fitch
P.O. Box 1647
Socorro, NM 87801-1647
(575) 835-0048

Service Certificate

I certify that I served a true copy of the foregoing Motion for Attorneys Fees and Costs upon Plaintiff's counsel and other parties of record by mail or electronic service as follows:

Electronic Service

Dennis R. Francish, Esq.
Attorney for Plaintiff
5400 Lomas NE
Albuquerque, NM 87110

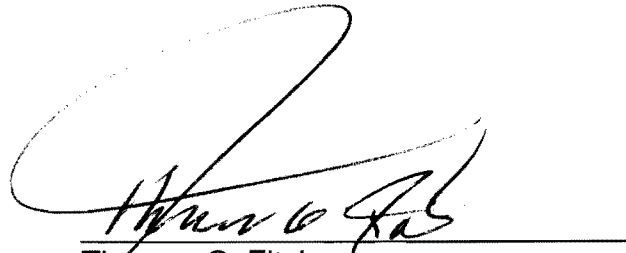
Electronic Service

Paul J. Kennedy and
Darin M. Foster
Kennedy & Han PC
Attorneys for Plaintiff
201 12th St NW
Albuquerque, NM 87102

Electronic Service

Lee Deschamps and
Stephen Karl Kortemeier
Attorneys for Defendants
West, Wagner, Hickox,
and Hurst
P.O. Drawer 389
Socorro, NM 87801

on this 29th day of June, 2011.



Thomas G. Fitch

Fitch & Tausch, LLC
Attorneys at Law
P. O. Box 1647
715 N. California Street
Socorro, NM 87801
(575) 835-0048

Socorro Electric Cooperative Matter

June 29, 2011

STATEMENT

Professional Services

<u>Date</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
7/12/2010	Receive and review copy of Complaint from SEC office after Ms. Tausch telephones attorney Francish.	0.50	\$100.00
7/21/2010	Draft Motion to dismiss and associated legal research.	2.00	\$400.00
7/23/2010	Revise Rule 12B Motion; finalize same. Prepare request for hearing.	0.90	\$180.00
7/27/2010	Receive and review Gerbracht's Limited Entry of Appearance-Pro Se & Motion to Quash Service by Publication.	0.20	\$40.00
7/30/2010	Receive and review Entry of Appearance on Behalf of Charlene West, Charlie Wagner and Charlene Wagner by Deschamps. Receive and review Entry of Appearance on Behalf of Alvin Hickox by Deschamps.	0.20	\$40.00

<u>Date</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
8/2/2010	Recieve and review "recusal" of Judge Pope by Deschamps.	0.10	\$20.00
	Receive and review Answer of Defendant Charlene West.	0.30	\$60.00
	Receive and review Notice of Judge Assignment of William A. Sanchez.	0.10	\$20.00
8/4/2010	Telephone call to Judge Sanchez office to determine if hearing still sceduled; prepare second request for hearing as requested by Judge Sanchez's office.	0.30	\$60.00
8/5/2010	Receive and review "recusal" of Judge Sanchez by Deschamps. Check Socorro case for status--clerk's certificate issued.	0.20	\$40.00
8/9/2010	Prepare third request for hearing; letter to clerk; letter to third judge.	0.30	\$60.00
	Receive e-mail from Francish with link to response to Gerbracht's motion. Copy same to folder.	0.10	\$20.00
	Receive and review Notice of Judge Assignment of George E. Eichwald.	0.10	\$20.00
8/11/2010	Receive and review Plaintiff's Response to Defendant Gerbracht's Motion to Quash Service by Publication.	0.40	\$80.00
8/12/2010	Receive and review excusal of Judge Eichwald by Deschamps.	0.10	\$20.00

<u>Date</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
8/12/2010	Receive and review Answer of Defendant Clark Hust (Deschamps).	0.30	\$60.00
8/13/2010	Receive and review Notice of Judge Assignment of John F. Davis.	0.10	\$20.00
8/15/2010	Research and preparation of motion to strike	2.50	\$500.00
8/16/2010	Prepare fourth request for hearing on Rule 12B motion; prepare request for hearing on motion to strike further disqualification of judges; letter to clerk; letter to judge.	0.40	\$80.00
8/19/2010	Draft reply to Plaintiff's response to our Rule 12B motion.	2.30	\$460.00
8/25/2010	Receive and review recusal of Judge Davis.	0.10	\$20.00
	Receive and review Cross-Claim and Request for Class Action Certification from Deschamps.	1.00	\$200.00
8/26/2010	Receive call from attorney Woods requesting copies of two motions filed by PAT and TGF; send electronic copies; request copies of his filings.	0.20	\$40.00
8/27/2010	Receive and review electronic copies of filings by attorney Woods.	0.30	\$60.00
8/30/2010	Prepare, file and serve Entry of Appearance electronically.	0.20	\$40.00
	Receive and review Notice of Judge Assignment of Camille Martinez-Olguin.	0.10	\$20.00

<u>Date</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
9/2/2010	Receive and review excusal of Judge Camille Martinez-Olguin.	0.10	\$20.00
9/7/2010	Receive and review Notice of Judge Assignment of Violet C. Otero.	0.10	\$20.00
9/28/2010	Office conference with attorney Matthew Roland concerning his disqualification of Judge Otero; discussion of motion to disqualify attorneys for SEC; discuss case in general	0.80	\$160.00
12/14/2010	Travel to Los Lunas; pre hearing discussions with other participants; attend and participate in status conference; return to Socorro.	4.10	\$820.00
12/28/2010	Receive and review December 22, 2010 letter from Judge Mitchell. Review proposed scheduling order prepared by the Judge. Briefly review the Schein case. Prepare letter in response to Judge Mitchell's letter.	0.60	\$120.00
1/13/2011	Brief research concerning binding effect of declaratory judgment on non-parties.	0.70	\$140.00
1/20/2011	Preparation of letter brief.	0.90	\$180.00
2/25/2011	Prepare for hearing.	2.00	\$400.00
	Travel to Los Lunas; attend and participate in hearing; return to Socorro. (12:00 noon to 4:30 p.m.)	4.50	\$900.00
5/17/2011	Preparation for Wednesday, May 18, 2011 hearing.	2.50	\$500.00

<u>Date</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
5/18/2011	Final preparation for hearing; attend hearing.	2.50	\$500.00
5/26/2011	Receive and review Order from attorney Kortemeier memorializing the May 18 hearing; prepare draft of same with suggested changes; prepare letter to Mr. Kortemeier conveying proposed changes and raising some questions.	0.80	\$160.00
5/27/2011	Receive and review Order prepared by Kortemeier; edit Order and propose changes; prepare letter discussing changes and forward to presently appearing parties.	1.20	\$240.00
6/14/2011	Receive and review proposed Order from Kennedy law firm; prepare brief response directed to Court.	0.30	\$60.00
	Request from court to illustrate Order to show changes made by Fitch & Tausch	0.30	N/C
	Receive and review letter from Kortemeier re his opinion that Fitch & Tausch are no longer involved; prepare letter to Judge Mitchell protesting Kortemeier's decision.	0.30	\$60.00
For professional services rendered			<u>\$6,940.00</u>
Additional Charges :			

<u>Date</u>	<u>Description</u>	
7/23/2010	Mileage to Los Lunas and back (116 round trip); file Entry of Special Appearance and Rule 12 Defenses.	58.00

<u>Date</u>	<u>Description</u>	<u>Amount</u>
12/14/2010	Mileage to Los Lunas and back (116 round trip); attend status hearing before Judge Mitchell.	58.00
2/25/2011	Mileage to Los Lunas and back (116 miles round trip); attend hearing.	59.16
	Total additional charges	<u>\$175.16</u>
	Tax	\$485.80
	Total amount of this bill	<u>\$7,600.96</u>
	Accounts receivable transactions	
6/29/2011	Courtesy Discount	<u>(\$3,800.48)</u>
	Total payments and adjustments	<u>(\$3,800.48)</u>
	Balance due	<u><u>\$3,800.48</u></u>

Copied from: *www.informedcynic.com*

Please Help the Member Legal
Defense Fund

A special trust account has been setup on behalf of member-owners for their legal defense. This specialized account preserves the identity of those who do not want their names out in the open.

Please make the check or money order out to:

"Client Trust Account" With a notation on the check of "SEC Member's Legal Defense Fund"

Mail to:
SEC Members' Legal
Defense Fund
c/o Deschamps & Kortemeier
P.O. Box 389
Socorro, NM 87801

Exhibit B