

**STATE OF NEW MEXICO
THIRTEENTH JUDICIAL DISTRICT
COUNTY OF VALENCIA**

SOCORRO ELECTRIC COOPERATIVE, INC.,

Plaintiff,

v.

CHARLENE WEST, et al.,

No. D1314-CV-2010-0849

Judge: Mitchell

Defendants,

And

**CHARLES WAGNER, individually and
on behalf of those similarly situated, et al.,
Cross-Claim Plaintiff,**

v.

**SOCORRO ELECTRIC COOPERATIVE, INC.,
et al.,**

Cross-Claim Defendants.

**PLAINTIFF'S REPLY TO DEFENDANTS' RESPONSE TO MOTION TO
RECONSIDER ORDER AWARDING ATTORNEY'S FEES**

Plaintiff Socorro Electric Cooperative, Inc. hereby brings this, its Reply to Defendants' Response to the Motion to Reconsider Order Awarding Attorney's Fees filed with the Court on or about November 21, 2011. The present Response was filed on December 8, 2011 by the Defendants Polly Ann Tausch and Thomas G. Fitch. In reply to the Tausch-Fitch Response, Plaintiff states as follows:

As a preliminary matter, Defendants' brief Response contains certain factual inaccuracies. At Paragraph 2, Defendants imply that attorneys Fitch and Tausch represented two

separate members and distinct during this litigation. In fact, Ms. Tausch and Mr. Fitch represented themselves, and they have appeared as *pro se* litigants throughout this suit. Similarly, at Paragraph 4, Defendants incorrectly state that the Court held that *all* the by-law changes enacted at the April 17, 2010 annual meeting were valid. In fact, the language of at least one by-law was changed and another by-law was stricken by the Court as “aspirational.” See, *Order on Hearing on Partial Merits*, entered on June 24, 2011. Finally, the Court did not make any ruling as to attorney’s fees at or during the May 19, 2011 hearing. The Court allowed motions to be filed regarding the matter of attorney’s fees, and it entered an Order on the issue on November 3, 2011. The current Motion to Reconsider follows from the November 3rd Order.

While Defendants’ factual inaccuracies are relatively minor, Defendants’ mis-statements as to the nature of Plaintiff’s current motion are of much greater significance. By and through the current Motion, Plaintiff has asked this Court to recognize that the November 3rd Order is not a final order or judgment in this matter. As such, the Order is not currently the proper subject for appeal, and it may be revised by the Court at any time prior to the entry of a final judgment. Under these circumstances, Plaintiff has requested that the Court reconsider the discrete portion of the Order which requires payment of the attorney’s fee award within 30 days.

Plaintiff is not asserting that Rule 1-054(B) allows a Court to *withhold* ruling on any matter. The Court has undeniably made its ruling as to attorney’s fees. However, Rule 1-054(B) clearly establishes that this ruling is not a final judgment and that it is “subject to revision at any time before the entry of judgment adjudicating all the claims.” Defendants do not substantively address the plain language of Rule 1-054, nor do they challenge any other argument or statement of law contained in Plaintiff’s Motion. Instead, without citation or support, Defendants simply

state that Rule 1-54 does not support Plaintiff's claim. The totality of Plaintiff's Motion demonstrates that this assertion is incorrect.

Defendants Fitch and Tausch also make the unsupported argument that their involvement in the current litigation is over. These Defendants are essentially arguing that the November 3rd Order should be treated as final *as to them*, because they have no further interest in the litigation. However, Defendants have presented no legal arguments to support their assertion as to finality of an order in relation to particular defendants. Furthermore, Defendants have failed to recognize that they are still, and will continue to be, involved in this litigation as members of the class of individuals Cross-Claim Plaintiff Wagner is attempting to certify in the Cross-Claim. While Defendants Tausch and Fitch may have only intended to be involved in the declaratory judgment portion of this suit, the actions of Cross-Claim Plaintiff Wagner have involved them in a much larger and more complex legal suit which is likely to continue for some time.

While Plaintiff sympathizes with Defendants' desire to receive payment and cease their involvement with this matter, these Defendants remain involved in the ongoing litigation, and they will inevitably be involved in any future appeal of the November 3rd attorney's fees award.

WHEREFORE, Plaintiff renews the request contained in the underlying Motion, and asks the Court to reconsider its November 3, 2011 Order Awarding Attorney's fees, and further asks that the Court strike that portion of the Order which requires payment of the award within 30 days. Alternatively, Plaintiff requests that the Order be altered so that the payment will be due 30 days from the entry of a final judgment on this matter. As a final alternative, Plaintiff asks that the Order be amended to allow for payment into the registry of the Court. Plaintiff asks that the Court reconsider and alter the Order in the manner which best serves the interests of justice and the integrity of the litigation and appeal process.

Respectfully submitted,

KENNEDY & HAN, P.C.

"Electronically Filed"
/s/ Darin Foster, Attorney at Law
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CERTIFICATE OF SERVICE:

I certify that a copy of this
Response was served by the Court's
electronic filing system to the following
counsel of record on this 16th day of December, 2011.

s/s Darin Foster

Darin M. Foster

ALL PARTIES ENTITLED TO NOTICE (D1314-CV-2010-0849)

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