

## Co-op lawsuit put on pause

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Socorro Electric Cooperative's lawsuit against its member-owners has been on pause since Thomas G. Fitch, one of the attorneys defending the case, suffered injuries in a brutal attack at his law office in early August.

There have been no hearings in the case since a telephonic status hearing on June 16, and no activity in the court file since July 29, 2011 — Fitch's reply to the co-op's response to a motion to award attorney fees — entered one week before the attack. Since then, it's been quite.

State Police Spokesman Lt. Tim Johnson said on Monday that as of late last week Fitch was still hospitalized recovering from injuries sustained in the attack. Investigators have not yet taken a statement from Fitch regarding the assault due to his health condition, Johnson said.

"We want to be patient on this until we're sure he's 100 percent ready," he said.

Johnson said investigators have narrowed down a list of suspects, but they are not ready to make an arrest.

In order to maintain the integrity of the investigation, Johnson said he could not say whether the assault had anything to do with any specific case, but they are looking into the possibility that the assailant had previous legal dealings with Fitch, a former District Court Judge.

### Strong Statements

Judge Albert J. Mitchell Jr. is presiding over the case, which was filed in the 7th Judicial District Court in Los Lunas. He has already ruled against the co-op in the original case, an effort by Socorro Electric to block three new bylaws aimed at increasing transparency, but has yet to make a decision about whether a counterclaim that calls for class action certification will go forward.

Judge Mitchell has also yet to decide whether attorney fees and costs will be awarded to defense attorneys in the original case, but he did invite them to file motions requesting payment. Fitch and his wife and law partner Polly Tausch and the Deschamps & Kortemeier law office have done so.

In an Oct. 12 phone interview, Mitchell said he didn't know when there might be more movement in the case.

"I was hoping (Fitch) would be able to assist us as we move forward and address the countersuit and class action aspect," Mitchell said.

Fitch provided input to the court as the case progressed, at times making strong statements about what's left to be addressed.

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He made his feelings known about what he thought of the countersuit during the June 16 hearing, saying he was concerned that it would “become a rape of Socorro Electric Cooperative.” He pointed out the judge has already made a ruling in the case and that he did not feel the countersuit met the criteria for a class action suit.

In his motion for fees and costs filed June 29, Fitch said that it would be unfair for member-owners — the defendants in the case — to have to pay for a lawsuit brought against them in which they prevailed. He suggested co-op attorneys, or the members of the board of trustees who voted to bring suit, be made to pay.

“It would seem (in the first place) equitable to charge the person or persons responsible for the ill-advised lawsuit,” the motion reads. “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.”

### Letters Unanswered

Judge Mitchell also allowed discovery to start for the countersuit, saying it could factor in his decisions to award fees and costs and whether to grant the class action proposal. Attorneys on both sides said in August they had not begun discovery and that it would be a time-consuming process.

Mitchell said last week that he hasn't heard from either side about discovery. A proposed schedule for the countersuit has been introduced, but both sides must agree to it and nothing has been formally filed.

“Neither side has asked to set hearings or a status conference, and no one has requested anything from the court,” Mitchell said.

The judge did say he received recent correspondence that stated the sides have agreed to a “clean copy” of the new bylaws, something he ordered when he made his ruling against the co-op on May 18.

That letter, from co-op attorney Dennis Francish and dated Sept. 30, 2011, stated that all attorneys involved in the case had been furnished with a copy of the amended bylaws and the co-op would print and make available copies to co-op members.

Whether Fitch ever saw the final version is uncertain. Another piece of correspondence relating to the case is a letter from Fitch addressed to co-op attorneys, dated two weeks before he was assaulted, complaining that he had not yet seen a clean copy of the proposed bylaws. Fitch wrote that he was “confused” as to why the co-op was waiting for its board of trustees to approve the changes at a July 27 meeting. Doing so before all parties have had a chance to review them and provide input, he wrote, “appears to directly disregard the Court's order.”

Mitchell said the break in the proceedings wasn't necessarily due to Fitch's unavailability; but he'd prefer to carry on with Fitch's involvement.

“I wish Judge Fitch was doing well and we could move forward with his participation,” he said.

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