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STATE OF MINNESOTA

FILED
Court Administrator

DISTRICT COURT

COUNTY OF RAMSEY

APR 21 2009

SECOND JUDICIAL DISTRICT

By  Deputy

In the Matter of the Contest of
General Election held on November 4, 2008,
for the purpose of electing a United States
Senator from the State of Minnesota,

Cullen Sheehan and Norm Coleman,

Case No. 62-CV-09-56

Contestants,

v.

**AFFIDAVIT OF DAVID L. LILLEHAUG
REGARDING SANCTIONS**

Al Franken,

Contestee.

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

David L. Lillehaug, being duly sworn, on oath states and deposes as follows:

1. I was one of the attorneys for Contestee Al Franken in the above-captioned matter. This affidavit is submitted pursuant to the Court's Order for Judgment, dated April 13, 2009, directing that Contestee prove up by affidavit his reasonable costs and fees as part of a sanction for Contestants' failure to disclose documents related to witness Pamela Howell.

2. Contestee's costs on this issue are nominal and will be included in the overall costs affidavit that is being prepared. However, Contestee's attorneys' fees are substantial.

3. Minn. R. Civ. P. 37.02 provides that the Court may require a party to "pay the reasonable expenses, including attorney fees, caused by the failure" to disclose. Rule 37.02 is

not meant merely to compensate a prevailing party for expenses, but is also intended to deter abuses of the discovery process. See *Henricksen v. Henricksen*, 2000 WL 4197313 (Minn. Ct. App. 2000); *Dunham v. Opperman*, 2009 WL 982256 (Minn. Ct. App. 2009) (upholding \$35,000 sanction for “disregard of the court’s authority and their challenge to the integrity of the judicial system”). The amount of the monetary sanction imposed is within the discretion of the trial court. “As long as the record reflects a reasonable correlation between the final amount of the sanctions imposed, the expenses incurred . . . , and the basis of the court’s imposition of sanctions, there will be no abuse of discretion by the trial court.” *Mears Park Holding Corp. v. Morse/Diesel, Inc.*, 426 N.W.2d 214, 219-20 (Minn. Ct. App. 1988) (upholding \$29,000 sanction under Minn. R. Civ. P. 11.02, which has a similar deterrent purpose, for filing state action for purpose of delay).

4. Contestee submits that the appropriate sanction for Contestants’ failure to disclose is reimbursement for all of the time Contestee’s attorneys spent in trial preparation and in trial relative to witness Howell.

5. Associate Christopher Stafford and I prepared for Howell’s testimony on the weekend of February 21-22 and on the evening of Tuesday, February 24. We spent considerable time reviewing documents associated with Minneapolis Precinct 12-8, investigating Howell’s background, and inquiring into the circumstances of Election Night in the precinct. Our preparation was necessarily lengthy because Contestants did not provide any disclosures with respect to Howell’s testimony or produce any documents. Howell declined to speak with us. I estimate that I spent approximately 6 hours, and Stafford approximately 8 hours, preparing for Howell’s testimony.

6. Howell was first on the witness stand on Wednesday, February 25, 2008, at 1:45 p.m. The time of Howell's testimony, arguments by counsel, and the Court's striking the testimony was approximately 1.4 hours.

7. The Court reconsidered and, on February 26, 2008, directed that Howell return to the stand. I estimate that Stafford and I each spent 2 hours that evening preparing for the resumed cross-examination.

8. Howell returned to the stand on Friday, February 27, 2008, at 9 a.m. The testimony was interrupted by the discovery that Contestants' counsel had failed to produce email exchanges with Howell, including a draft affidavit. Howell's testimony and arguments of counsel consumed approximately 1.5 hours. The Court took under advisement Contestee's motion to strike Howell's testimony and the claim to which it related.

9. With Howell's statement and email exchanges finally in hand, I spent approximately 2.5 hours during the weekend of February 28-March 1 preparing for the possibility of resumed cross-examination.

10. Howell returned to the stand on Monday, March 2, 2008. Howell's testimony took approximately 0.8 hours.

11. The total time of Court proceedings regarding Howell was approximately 3.7 hours.

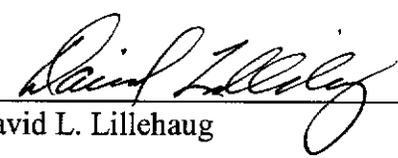
12. The time incurred on trial preparation and in trial with respect to Howell by each member of Contestee's trial team, and the hourly rates charged to Contestee, are as follows:

Name	Title	Task	Rate	Hours	Total
David Lillehaug	Attorney	Preparation	\$418	10.5	\$4,389
		Trial	\$418	3.7	\$1,546

Christopher Stafford	Attorney	Preparation	\$198	10.0	\$1,980
		Trial (2-25)	\$198	1.4	\$277
Marc Elias	Attorney	Trial	\$538	3.7	\$1,990
Kevin Hamilton	Attorney	Trial	\$464	3.7	\$1,716
Kate Andrias	Attorney	Trial (2-27)	\$331	1.5	\$496
Lisa Manheim	Attorney	Trial (3-2)	\$285	0.8	\$228
Leslie Anderson	Paralegal	Trial	\$165	3.7	\$610
Total					\$13,232

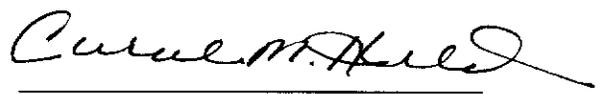
13. Contestee further requests attorneys' fees incurred in research for, and preparation of, this Affidavit, which I estimate to be \$2,900.

14. Accordingly Contestee requests an award of attorneys' fees in the total amount of \$16,132.



 David L. Lillehaug

Subscribed and sworn to before me
 this 21st day of April, 2009.



 Notary Public



