Filed
13 March 5 P4:05
Amalia Rodriguez-Mendoza
District Clerk
Travis District
D-1-GN-11-003130

CAUSE NO. D-1-GN-11-003130

THE TEXAS TAXPAYER & STUDENT FAIRNESS COALITION, et al; CALHOUN COUNTY ISD, et al; EDGEWOOD ISD, et al; FORT BEND ISD, et al; TEXAS CHARTER SCHOOL ASSOCIATION, et al. Plaintiffs	§	IN THE DISTRICT COURT
JOYCE COLEMAN, et al Intervenors	§	
vs.	§	200th JUDICIAL DISTRICT
MICHAEL WILLIAMS, COMMISSIONER OF EDUCATION, IN HIS OFFICIAL CAPACITY; SUSAN COMBS, TEXAS COMPTROLLER OF PUBLIC ACCOUNTS, IN HER OFFICIAL CAPACITY; TEXAS STATE BOARD OF EDUCATION, Defendants.	§	TRAVIS COUNTY, TEXAS

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DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO DESIGNATE EXPERT FOR ATTORNEY'S FEES

Defendants, Michael Williams, Commissioner of Education in his official capacity, Susan Combs, Texas Comptroller of Public Accounts in her official capacity, and the Texas State Board of Education ("Defendants"), through the undersigned, file this *Unopposed Motion for Leave to Designate Expert for Attorney's Fees.*

I. Introduction

On November 7, 2011, Defendants filed their Original Answer in which, among other things, Defendants indicated that they would seek costs of suit and attorney's fees. *Defendants'*

Orig. Answer. On August 29, 2012, this Court entered an order granting the parties' Agreed Motion for Bifurcated Trial. Per this order, the trial on the amount of attorney's fees, costs, and expenses to be awarded, if any, is to be tried separately from all other issues in the underlying matter. Separately, the deadline for Defendants to make expert designations was September 17, 2012. *See Rule 11 Agreement, filed Aug. 16, 2012*.

Defendants now seek this Court's leave to designate Mary Taylor Henderson, an Assistant Attorney General in the Consumer Protection Division of the Office of the Attorney General, to serve as the Defendants' attorney's fees expert. Defendants have conferred with opposing counsel and none are opposed to this motion.

II. Defendants' Designation does not surprise or unfairly burden Plaintiffs

Where an attorney is not identified as a witness for the purpose of attorney's fees, it is not an abuse of discretion for the court to permit an attorney to provide testimony in support of a petition for fees when there is no surprise to opposing parties or there is good cause. *Hoefker v. Elgohary*, 248 S.W.3d 326 (Tex. App. Houston 1st Dist. 2007); *See also Beard Family P'ship v. Commer. Indem. Ins. Co.*, 116 S.W. 3d 839, 850 (there is a lack of unfair surprise or prejudice to opposing party when petitioner failed to designate an attorneys' fees expert but did include request for fees in their pleadings since the inception of the lawsuit). In addition, permitting an expert to testify and submit fee records in an action seeking attorneys' fees under Tex. Civ. Prac. & Rem. Code Ann. § 37.009 is appropriate when the record supports an implicit finding of lack of unfair surprise, even when the expert designation is untimely. *Montemayor v. Ortiz*, 208 S.W.3d 627 (Tex. App. Corpus Christi 2006).

Defendants have been on record as seeking attorney's fees during the entirety of the underlying proceedings. *See Defendants' Orig. Answer*, Sec. III. Therefore, all parties were

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given notice that Defendants would seek attorney's fees and costs in this matter. In addition, as noted above, Plaintiffs do not oppose this motion for leave. Therefore, granting this motion would not surprise or unfairly burden any party.

Defendants seek leave to designate Mary Taylor Henderson as an attorney's fees expert. Ms. Henderson has been practicing law for 27 years, and has been an Assistant Attorney General for 19 of those years. Ms. Henderson is qualified to attest to the reasonable and necessary nature of Defendants' request for fees, and her full resume is attached hereto as Exhibit A.

III. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that this Court grant them leave to designate Mary Henderson as an expert witness for our motion for attorney's fees and costs.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

DAVID C. MATTAX
Deputy Attorney General for Defense Litigation

JAMES "BEAU" ECCLES
Division Chief - General Litigation

/s/ *Shelley N. Dahlberg*
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Texas Bar No. 24012491

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Texas Bar No. 24030166
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NICOLE BUNKER-HENDERSON

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of March, 2013, I forwarded the foregoing document to all known counsel of record via electronic mail:

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/s/ *Shelley N. Dahlberg*
Shelley N. Dahlberg
Assistant Attorney General

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MARY TAYLOR HENDERSON
Office of the Attorney General of Texas
300 W. 15th, 9th Floor
Austin, Texas 78701
(512) 475-4185 (Office)

PROFESSIONAL EXPERIENCE

Office of the Attorney General of Texas Consumer Protection Division, Managing Attorney and Deputy Division Chief (1997 to present). Responsibilities have included managing different aspects of the Division, multimillion dollar budget/litigation, seven regional offices across Texas; management of General Enforcement Team, Antitrust, Charitable Trusts, Insurance Practices and Utility Regulation sections; develop policies, manage interagency and expert contracts; open records analysis and attorney general opinion review; engage in consumer outreach activities; creation of training materials and development of substantive training opportunities for the agency, including annual continuing legal education for attorneys and litigation staff; handle an appellate and litigation caseload, including consumer and nonprofit legal issues and serve as appellate reviewer and advisor to attorneys within the division; draft and analyze consumer related legislation; meet with legislative staff and testify before legislative committees and hearings; review settlements and attorney's fees recovered in different cases.

Texas State University at San Marcos, Texas
Adjunct Lecturer of Consumer Law, School of Consumer and Family Services (2005-2007; 2009 to 2011). Taught upper division undergraduate course in consumer law, covering broad range of topics including consumer credit, identity theft and internet consumer issues.

The University of Texas System, Office of General Counsel
Attorney, General Law Section (1996 to 1997). Managed all aspects of employment and tort litigation for 15 component institutions; advised on issues involving all aspects of employment law, student and employee discipline, policies and procedures, risk management and legislation.

Office of the Attorney General of Texas, General Litigation Division
Assistant Attorney General V (1993 to 1996). Senior Attorney. Represented state agencies and employees in all phases of litigation and appeals primarily involving employment, constitutional and tort claims in State and Federal courts. Served as Acting Division Chief in the Chief's absence. Managed attorneys, law clerks and support staff.

Office of the Attorney General of Texas, Tort Litigation Division
Assistant Attorney General IV (1992 to 1993). Represented state agencies and employees in all phases of litigation and appeals primarily involving the Texas Tort Claims Act.

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Porter, Rogers, Dahlman, Gordon & Lee, P.C., Corpus Christi, Texas
Attorney at Law (1987 to 1992). Extensive litigation and appellate practice of law, including insurance defense, medical malpractice, labor law, administrative law in State and Federal courts.

Thirteenth Judicial Court of Appeals, Corpus Christi, Texas
Briefing Attorney (1985 to 1987). Legal briefing and research of civil and criminal appeals for the Honorable Fortunato "Pete" Benavides and all other appellate justices.

EDUCATION

Baylor University School of Law, Waco, Texas - J.D. 1985
President – Harvey M. Richey Moot Court Society
National Appellate Advocacy Team
President –International Law Society

Stephens College, Columbia, Missouri - B.A. 1982
Dean's Honor List
Oxford University, Oxford, England
Teaching Assistant - Business & Social Science Departments
Varsity Tennis Team

PROFESSIONAL AFFILIATIONS

Board Certified Civil Appellate Law - Texas Board of Legal Specialization
United States Supreme Court
U.S. Court of Appeals, Fifth Circuit
U.S. District Courts, All Districts of Texas
State Bar of Texas (Texas Bar No. 19713750) & Austin Bar Association

PROFESSIONAL ACTIVITIES

Training and Speaking Activities

Course Director & Planner – 11th OAG Consumer Protection Division Meeting (October 2012)
Speaker – OAG Law Clerk Brown Bag – "What Does CPD Do?" (May 2012)
Facilitator – NAAG (National Association of Attorneys General) Negotiations Workshop, (November 2011)
Presenter & Planning Committee – State Bar of Texas, Governance of Nonprofit Organizations Course 2011, "Legislative & Case law Update" (August 2011)

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Presenter – The Center for Nonprofit Management & BKD, LLP CPAs, "Best Practices For Exempt Organizations: An Internal Revenue Service, Texas Attorney General And Practitioner's Point of View" Dallas, Texas (October 2010)

Speaker & Planning Committee – State Bar of Texas, Governance of Nonprofit Organizations Course "When the AG Calls" Austin, Texas (August 2010)

Planner & Speaker – 10th Consumer Protection & Public Health Division Meeting, "Issues to Consider In Preparing for Trial & Beyond: The Ultimate Checklist" (January 2010)

Speaker – American Conference Institute's 3rd Annual Forum on Sweepstakes, Contests & Promotions, "Government Insights on How to Properly Structure, Oversee, and Administer Sweepstakes, Contests & Promotions" New York, NY (October 2009)

Planning Committee – NASCO National Conference, Austin, Texas (October 2009) Course Director – State Bar of Texas, Governance of Nonprofit Organizations Course 2009, Austin, Texas (August 2009)

Speaker – Nonprofit Management Center of the Permian Basin, Lunch & Learn Series, Midland, Texas, "It's Not My Responsibility, Is It?" (February 9, 2009)

Course Director & Moderator – Office of the Attorney General of Texas 2009 Charitable Hospitals Summit, "Charitable Hospitals: Modern Trends, Obligations & Challenges" (January 2009)

Planning Committee – State Bar of Texas, Governance of Nonprofit Organizations Course 2008, Austin, Texas (August 2008)

Planner & Speaker – 9th Consumer Protection & Public Health Division Meeting, "Drafting Effective Judgments And Settlements" (January 2007)

Speaker – 8th Annual Update for Hospital District Legal Counsel, "Fundraising and Political Activities by Hospital Districts and Their Foundations" (October 2006)

Speaker – Texas Bar CLE Advanced Administrative Law Course 2006, "Regulation of 501(c)(3) Organizations" (September 2006)

Speaker, Planner – Texas Bar CLE Governance of Nonprofit Organizations Course, "Fundraising Regulation" (August 2006)

Graduate – Governor's Management Development Program, Governor's Center for Management Development (May 2006)

Speaker – 2006 AdNet & CommA Conference, "On the Internet No One Knows You're A Dog" (March 2006)

Speaker, Planner – NAAG/NASCO Charitable Trusts & Solicitations Seminar, "New State Legislative Initiative" and "What's Happening Around The States" (November 2005)

Planner, Moderator, Speaker – 8th Consumer Protection Division Meeting, "The AG as a Successful Advocate in Mediation" (October 2005)

Speaker – The 2nd Annual ABA Washington Healthcare Summit, "Community Benefit, Charity Care, and Compensation: The Current Controversy" (December 2004)

Speaker, Planner –NAAG/NASCO Annual Conference, "Bankruptcy Primer 101 Involving Charity Bankruptcies" (October 2004)

Planner & Faculty – OAG Basic Skills Training Course, "What's Different About Representing The State: State Agency Representation" (May 2004)

Planner, Moderator & Speaker – 7th Annual Consumer Protection Division Meeting, "Commandments of Legal Ethics for AAGs" (November 2002)

Judge – NITA (National Institute of Trial Advocates) Tournament of Champions Advocacy Competition (Austin, Texas – October, November 2002, 2010)

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Faculty –Basic Civil Trial Advocacy Course, Office of the Attorney General of Texas (2000- 2003)
Moderator, Planner – NAAG/NASCO Annual Conference, "Life After Enron" panel (Minneapolis, Minnesota – October 6, 2002)
Faculty – Basic Deposition Skills Training Course, Office of the Attorney General of Texas, "Theory Testing And Admissions Gathering" (2002 - 2009)
Speaker – National Association of State Charity Officials Annual Conference, "Emerging Trends" (Baltimore, Maryland - October 2001)
Planner and Speaker – 6th Annual Consumer Protection Division Meeting, "Recoveries: Types of Monetary Recoveries, How We Get It & Where It Goes" (November 2001)
Conference Faculty – 18th Annual Nonprofit Organizations Institute sponsored by The University of Texas School of Law, "Governmental Official Update" (January 2001)
Faculty – Advanced Appellate Law Course, Office of the Attorney General of Texas (January 2001)

Speaker – North Texas Center's Nonprofit Legal and Accounting Institute, "Charitable Trusts and Open Meetings Laws Applicable to Nonprofit Organizations" (Wichita Falls, Texas – October 2000)
Speaker – 9th Annual Nonprofit Legal & Accounting Institute, "Report from the Office of the Attorney General Charitable Trusts Section" (San Antonio, Texas Dec. 1999)

Organizational & Pro Bono Activities

Special Assistant Appellate Disciplinary Counsel - Commission for Lawyer Discipline State Bar of Texas (current)
Supreme Court of Texas – Unauthorized Practice of Law State Committee OAG Liaison (current)
OAG Training Committee – Basic Skills Seminar Development Director (2003-05)
Board of Directors – NASCO (National Association of State Charity Officials) (2000-2001; 2001-2002; 2002-2003; 2003-2004)
Health Care Task Force– Office of the Attorney General of Texas (2001-2004)
Travis County Bar Association
Committees: Judicial Affairs, Lawyers & Children, Mentoring, Publications (1994 - 2000)
Texas Young Lawyers Association
Committees: Needs of Senior Citizens, Children's Rights, Women in the Profession (1995-1996)
Austin Young Lawyers Association - Director (1994-1995)
Corpus Christi Bar Association - Director (1989-1990; 1991-1992)
Corpus Christi Young Lawyers Association – President (1989-1990)
Volunteer Mediator – Nueces County Dispute Resolution Center (1985-1992)

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Plaintiffs	§	
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Defendants.	§	TRAVIS COUNTY, TEXAS

ORDER ON DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO DESIGNATE EXPERT FOR ATTORNEY'S FEES

Before the Court is the Defendants' Unopposed Motion for Leave to Designate Expert for Attorney's Fees. After due consideration, the Court finds Defendants' Request to be meritorious.

It is hereby ORDERED that said Defendants' Unopposed Motion for Leave to Designate Expert for Attorney's Fees is GRANTED.

The Honorable John K. Dietz
250th District Court
Travis County, Texas

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