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2/26/09  
CUX

# FAX DOCUMENT

CASE TYPE: CIVIL

DISTRICT COURT

STATE OF MINNESOTA

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

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

File No. 62-CV-09-56

Cullen Sheehan and Norm Coleman,

Contestants,

v.

Al Franken,

Contestee.

AFFIDAVIT OF  
M. ALISON LUTTERMAN  
SUPPORTING THE  
MOTION OF CITY OF  
DULUTH AND COX  
TO QUASH  
SUBPOENA

State of Minnesota )

ss

County of St. Louis )

M. Alison Lutterman, being first duly sworn upon oath, deposes and states as follows:

1. I am the Deputy Attorney for the City of Duluth. I am the attorney that assists employees subpoenaed to testify in civil matters to which the City is not a party and I am familiar with the policies and practices of the City with regard to the compensation of such employees.

2. On February 23, 2009 and after the 4:30 business closing of City offices, Cox received e-mail notification that Franken was seeking to subpoena him to testify in the above matter on February 26, 2009 at 9:00 a.m.. In response, on February 24<sup>th</sup>, I provided

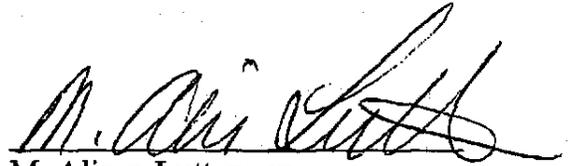
Franken's legal team with information regarding the reasonable compensation required as authorized by Rule 45.03 (d), Minn.R.Civ.P. and requested \$1,151.50 to be paid in advance. Attached hereto and made a part hereof as Exhibit 1 is a true and correct copy of that letter.

3. In determining the value of Cox's time, the City calculated an hourly rate of \$60.00 per hour based upon the value of his annual salary and benefits. We assumed two days of time because of the noted 9:00 a.m. appearance time on the e-mailed request. The mileage and meal rates are based upon the current City travel reimbursement policy. Pursuant to this policy the City must reimburse Cox for travel expenses incurred that result from his employment with the City. It is standard practice in the City to allow the employee to choose whether to use a vacation day or consider the day work related because the vacation accrual status varies from employee to employee. If the employee remains on duty, the witness check is tendered to the City and the employee is reimbursed for direct out of pocket expenses and mileage advanced by the employee. This practice provides compensation to the employee and reimburses the City for the value of the lost employee time. Mr. Cox is considered an FLSA exempt employee and is paid a salary rather than compensated on an hourly basis.

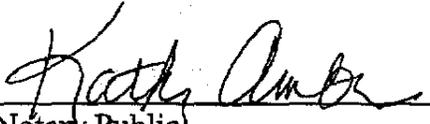
4. In response, Cox was served with a subpoena requiring his appearance of February 26, 2009 at 9:00 a.m. and tendered a check in the amount of \$105.00. This amount does not reasonably compensate Cox for the cost of traveling a minimum of 300 miles round trip, a minimum of six hours of travel time, the loss of at least a day of work, the cost of meals

while traveling, the cost to park, the potential cost of hotel accommodations, and the value of his time away from his family. *Id.*

5. As of the time this memorandum was served, Cox and Franken have not reached an agreement on additional compensation.

  
M. Alison Lutterman

Subscribed and sworn before me  
this 26<sup>th</sup> day of February, 2009.

  
Notary Public





City of Duluth  
Attorney's Office

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February 24, 2009

Richard D. Snyder, Esq.  
Fredrickson & Byron, P.A.  
200 S. 6<sup>th</sup> St.  
Suite 4000  
Mpls. MN 55402

RE: Subpoena of Jeffrey Cox, Duluth City Clerk  
In Re Contest of the General Election held on November  
4, 2008, for the purpose of electing a United States  
Senator from the State of Minnesota  
Court File No. 62-CV-09-56

Dear Mr. Snyder:

I am responding to your communication to Mr. Cox regarding his possible testimony in the above referenced matter.

With regard to your request that he accept an e-mailed or faxed subpoena without witness fee tendered in advance, please be advised that Mr. Cox does not agree to accept such service. He will agree to substituted service by delivery via process server or United States Mail to the Office of the City Attorney.

With regard to the matter of the witness fee, Mr. Cox does not waive tender of the statutory witness fee in conjunction with service of the subpoena. Please be further advised that because Mr. Cox is not a party to this action, or an employee of a party, and is being asked to testify on matters relating to knowledge, information, or facts obtained as a result of activities in his profession, he is entitled to reasonable compensation for the time and expense involved in preparing for and giving such testimony. *See Rule 45.03(d), Minn.R.Civ.P.* Mr. Cox's reimbursement requirements are as follows:

1. Rate for his time is \$60.00 per hour. He will bill on a 24 hour basis.
2. Minimum time reimbursement paid in advance of initiating his travel is \$1000.00.

Citizens and Government working together to provide an environment in which  
our community can enhance its quality of life and continue to prosper

The City of Duluth uses paper produced exclusively in Minnesota using wood from responsibly managed forests.

EXHIBIT 1

- Mileage reimbursement rate is .505 per mile.
- 3. Minimum mileage amount to be tendered in advance of initiation of travel is \$ 151.50 (300 miles @ .505 per mile)
- 4. Hotel expense reimbursement not to exceed \$125.00 per day.
- 5. Meal reimbursement at the following rates:
  - a. Breakfast @ \$7.50
  - b. Lunch @ \$8.50
  - c. Dinner @ \$18.00
- 6. Parking reimbursement @ actual cost.

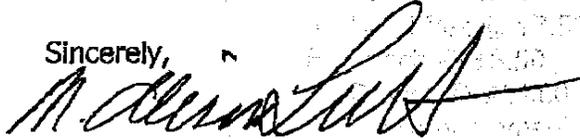
The total amount of witness fee to be tendered in advance is \$1,151.50.

Mr. Cox requests that if possible, his testimony be scheduled to begin at an afternoon session of the court. This will also be a cost savings to your client as he will not have to bill you for 2 days (travel day before, hotel expense, additional meal expense and testimony and travel on Day 2).

Mr. Cox also requests that you schedule his appearance through the Office of the City Attorney. To this end, you may contact me directly or my paralegal Kathy Amborn.

Please contact me directly with any questions or concerns you may have.

Sincerely,



M. Alison Lutterman  
Deputy City Attorney

C: Jeff Cox, City Clerk