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OFFICE OF
APPELLATE COURTS

JUN 5 2012

FILED

June 5, 2012

Eric J. Magnuson
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VIA EMAIL AND MESSENGER

Minnesota Special Redistricting Panel
c/o Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Dr. Martin Luther King, Jr. Boulevard
St. Paul, MN 55155-6012

**Re: Hippert et al. v. Ritchie et al.
Court File No. A11-152**

Dear Panel:

I write in response to the submissions of Secretary of State Mark Ritchie and Wright County Auditor Robert Hiivala with respect to the Hippert Plaintiffs' motion for attorneys' fees and costs in this matter. Although the Panel's order did not provide for replies to the responses, I respectfully request the Panel consider these brief comments.

The arguments of Secretary Ritchie and Auditor Hiivala should be rejected and Plaintiffs' motion for attorneys' fees and costs should be granted for the following reasons:

1. Plaintiffs prevailed in this litigation under the standards established in the last redistricting litigation to occur in Minnesota, *Zachman et al. v. Kiffmeyer et al.*, No. C0-01-160. See Order Awarding Attorney Fees (Minn. Special Redistricting Panel, Oct. 16, 2002). The precedent of *Zachman* is dispositive and requires that Plaintiffs' motion for attorneys' fees and costs be granted.

2. The affidavit that I submitted in support of Plaintiffs' motion is based on my personal knowledge not only of the litigation before the panel, but also more than thirty years of litigation experience and significant experience in matters concerning attorney fee applications. Respectfully, it is more than adequate to support both the hourly rates requested and the total number of hours for which Plaintiffs seek compensation.

3. The requirements of the Minnesota General Rule of Practice 119.02 do not apply to this proceeding. See Minn. Gen. R. Prac. 1.01 (limiting application of the Minnesota General Rules of Practice to the "trial courts of the state"). Nonetheless, the submissions of the Plaintiffs fully satisfy the requirements of that rule, as they contain detailed information concerning the

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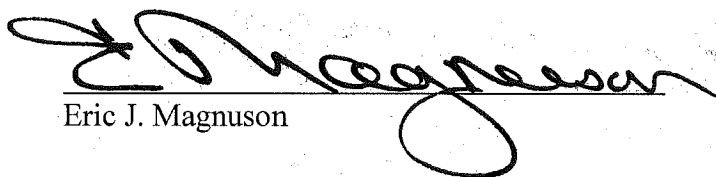
activities undertaken, the time spent, the lawyers who performed the work, and the hourly rates charged.

4. Redaction of invoices is appropriate. By not redacting their invoices, the other parties in this litigation likely waived the attorney-client privilege or work-product doctrine with respect to certain matters. The redaction of Plaintiffs' invoices is limited to the protection of attorney-client communications and work-product. Plaintiffs' approach is consistent with the standards set forth in *City Pages v. State*, 655 N.W.2d 839 (Minn. Ct. App. 2003). I was counsel of record in *City Pages* and supervised the redaction of the bills that were ultimately produced in that case as well as the similar redaction of invoices that occurred in this case. While Plaintiffs do not believe that it should be necessary, Plaintiffs are willing to provide unredacted invoices for *in camera* inspection by the Panel if the Panel deems it necessary.

5. The attorneys' fees and costs requested by Plaintiffs are reasonable. The amount of attorneys' fees requested by Plaintiffs is substantially less than what was incurred and does not include any fees incurred for the work performed by Trimble & Associates. This reduction satisfies any concerns the Defendants may have about the reasonableness of the work performed. Moreover, the total fees requested are less than the amount reflected in the invoices, based on the reason set forth in the original submission. The reduction is consistent with the approach taken by the plaintiffs in *Zachman*, who did not request all attorneys' fees incurred. See *Zachman*, No. C0-01-160, Affidavit of Timothy D. Kelly in Support of Zachman Plaintiffs' Motion for Attorneys' Fees, Costs and Disbursements (June 26, 2002) ("Kelly & Berens, P.A. declines to seek attorney fees or expenses in this proceeding.") The amount sought is the same as was requested in *Zachman*, adjusted for the increase in billing rates over the past decade.

The arguments of Secretary Ritchie and Auditor Hiivala should be rejected and the Hippert Plaintiffs' motion for attorneys' fees and costs should be granted.

Sincerely,



Eric J. Magnuson

EJM

STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL

A11-152

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Sara Hippert, Dave Greer, Linda Markowitz, Dee Dee Larson, Ben Maas, Gregg Peppin, Randy Penrod and Charles Roulet, individually and on behalf of all citizens and voting residents of Minnesota similarly situated,

Plaintiffs,

and

AFFIDAVIT OF SERVICE

Kenneth Martin, Lynn Wilson, Timothy O'Brien, Irene Peralez, Josie Johnson, Jane Krentz, Mark Altenburg and Debra Hasskamp, individually and on behalf of all citizens of Minnesota similarly situated,

Intervenors,

and

Audrey Britton, David Bly, Cary Coop, and John McIntosh, individually and on behalf of all citizens of Minnesota similarly situated,

Intervenors,

vs.

Mark Ritchie, Secretary of State of Minnesota; and Robert Hiiivala, Wright County Auditor, individually and on behalf of all Minnesota county chief election officers,

Defendants.

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

Kathy M. Thorp, being first duly sworn, deposes and says that on the 5th day of June, 2012, she caused to be filed with the Court via email and messenger the following documents:

- 1) Letter to Panel;
- 2) Affidavit of Service;

and served true and correct copies of the same upon the following parties by electronic mail and U.S. Mail with postage prepaid, by placing copies in envelopes addressed as shown below, which addresses are, respectively, the last known addresses for said parties, to-wit:

Alan I. Gilbert, Kristyn M. Anderson, Jason Pleggenkuhle
Minnesota Attorney General's Office
445 Minnesota St., Suite 1100
St. Paul, MN 55101-2128
Email: al.gilbert@ag.state.mn.us; kristyn.anderson@ag.state.mn.us;
jason.pleggenkuhle@ag.state.mn.us;

David L. Lillehaug, Christopher A. Stafford
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Thomas N. Kelly, Greg T. Kryzer
Wright County Attorney's Office
Wright County Government Center
10 2nd Street N.W., Room 400
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Tony P. Trimble, Matthew W. Haapoja, Mark W. Fosterling
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Alan W. Weinblatt, Jane L. Prince, Jay Benanav
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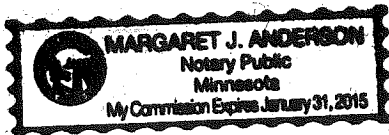
Dated: June 5, 2012.


Kathy M. Thorp

Subscribed and sworn to before me this 5th
day of June, 2012.


Notary Public

4643856v3





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JUN 05 2012

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June 5, 2012

Michael C. Wilhelm
(612) 977-8863
mwilhelm@briggs.com

VIA E-MAIL AND MESSENGER

Minnesota Special Redistricting Panel
c/o Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

**Re: *Sara Hippert, et al. v. Mark Ritchie, et al.*
State of Minnesota - Special Redistricting Panel
Court File No. A11-152**

Dear Sir/Madam:

I am enclosing an original and nine (9) copies of the following documents for filing in the above-captioned matter:

- 1) Letter to Panel; and
- 2) Affidavit of Service.

All parties are being served by copy of this letter, and as evidenced by the enclosed Affidavit of Service. An electronic copy will also be submitted.

Sincerely,

Michael C. Wilhelm

VIA E-MAIL AND MESSENGER

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MCW/jy
Enclosures

cc: **VIA EMAIL & U.S. MAIL:**
Eric J. Magnuson (w/enc.)
Elizabeth M. Brama (w/enc.)
Tony Trimble (w/enc.)
Matthew W. Haapoja
Mark W. Fosterling (w/enc.)
Alan I. Gilbert (w/enc.)
Kristyn M. Anderson (w/enc.)
Jason Pleggenkuhle (w/enc.)
Thomas N. Kelly (w/enc.)
Greg T. Kryzer (w/end.)
Alan W. Weinblatt (w/enc.)
Jay Benanav (w/enc.)
Jane L. Prince (w/enc.)
David L. Lillehaug (w/enc.)
Christopher A. Stafford (w/enc.)
Marc Elias (w/enc.)
Kevin J. Hamilton (w/enc.)
William Stafford (w/enc.)