

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

IN RE 2011 REDISTRICTING CASES

Case No. 4FA-11-02209 CI

**RESPONSE TO BOARD'S AND ADP'S MOTIONS RESPECTING LATE FILED ADP'S
LATE FILED MOTION**

The Riley Plaintiffs support the Alaska Democratic Party's motion to accept late filing of its motions for summary judgment, and oppose the Board's motion to strike.

Denial of the ADP's motion to accept late filing, or granting of the Board's motions to strike, would amount to the imposition of litigation ending sanctions against the ADP, because the Court's prior order precludes further assertion of claims not asserted in summary judgment. Declining ADP's motion to accept late filing has the substantive effect similar to dismissal of the ADP's claims. Such a result is inconsistent with established state law, which clearly and narrowly define the permissible range within which a trial court may impose litigation ending sanctions" *Hughes v. Bobich*, 875 P.2d 749, 752 (Alaska 1994).

Alaska's courts disfavor sanctions which resolve claims on procedural grounds rather than upon the merits of such claims. The imposition of litigation ending sanctions should only be applied 1) in extreme cases, 2) where the procedural violation was willful, 3) there is no alternative to such a sanction, and 4) when the sanction is reasonably related to the procedural violation. *Lloyds' London v. The Narrows, L & L Enterprises*, 846 P.2d 118, 119-120 (Alaska 1993).

The present circumstances do not warrant the imposition of claims ending sanctions. First, this is not an extreme case. Rather, the special electronic filing procedures in effect in this

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case are unusual in State litigation, and this is the first instance of the ADP acting as a party in this litigation. Second, the lateness was not willful, but a result of excusable neglect caused by a mis-calendaring of the deadlines and technical problems associated with the unusual e-filing process used in these proceedings. Third, there are other sanctions available that are less drastic and would allow the Court to consider the ADP's claims on their merits. And fourth, dismissing the ADP's claims is not reasonably related to the late filing of the motions.

If the Court declines to accept or strikes the ADP's motions, the Court is presented with more serious problems which arise because of the unique nature of these proceedings. Fundamentally, redistricting litigation is public interest litigation which substantially differs from most other cases where the opponents have personal and/or financial interests at stake. The litigation is part of a process that seeks to protect the voting rights of the Alaskan citizenry rather than advance the personal interests of any of the parties. As the Court in *Hickel* noted, where a plan has unconstitutional aspects not raised by the parties, the Court's responsibility to review the constitutionality of a redistricting plan may require the Court to raise issues *sue sponte*.¹ Dismissal of the ADP's claims on procedural grounds does not relieve this Court of its obligations to assure the constitutionality of the redistricting plan. Rather, the Court would have to address the issues through other means, which might be more prejudicial to the Board and the other parties. Allowing ADP to argue its motions and the other parties to respond is an aid to the Court in implementing its unique obligations in this case.

In the alternative, the Court might consider the ADP's filings as amicus filings to the extent that they address claims that have also been raised by the Riley plaintiffs. However, some of the ADP's claims differ from those raised by the Riley plaintiffs. In the event that the Court

1 *Hickel v Southeast Conference*, 846 P.2d 38, 54 (Alaska, 1993).

refuses to allow late filing, the Court should allow the Riley Plaintiffs the opportunity to address those claims that would otherwise be dismissed.

Date: September 17th, 2013

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Certificate of Service

I certify that a true and correct copy of the foregoing was served by e-mail on this September 17th, 2013 to:

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