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(SPACE BELOW FOR FILING STAMP ONLY)



5 Attorneys for Defendant City of Ontario
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8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO
9 WEST DISTRICT

11 CHINO BASIN MUNICIPAL WATER)
DISTRICT,)

12 Plaintiff,)

13 v.)

14 CITY OF CHINO, et al.,)

15 Defendants.)
16
17

CASE NO. RCV 51010
Specially Assigned to the Honorable
Judge J. Michael Gunn

CITY OF ONTARIO'S OPPOSITION TO "EX
PARTE APPLICATION TO STRIKE REPLY
TO OPPOSITION TO MOTION FOR
APPOINTMENT OF NINE MEMBER
BOARD AS WATERMASTER FILED BY
THE LAW FIRM OF NOSSMAN,
GUTHNER, KNOX & ELLIOTT, LLP;" AND
NOTICE OF APPLICATION FOR AWARD
OF EXPENSES AND ATTORNEYS' FEES
PURSUANT TO CODE OF CIVIL
PROCEDURE §128.5; DECLARATION OF
ROBERT E. DOUGHERTY

Ex Parte Hearing

Date: April 14, 1997

Time: 8:30 a.m.

Dept: RC-H

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23 The Monte Vista Water District (MVWD), in its continuing effort to keep the Chino Basin
24 Municipal Water District Board of Directors (CBMWD Board) as the serving Watermaster in this
25 case, has now gone beyond the bounds of propriety. The ex parte application (described above) can
26 only be characterized as a bad faith action or tactic which is frivolous within the meaning of Code
27 of Civil Procedure §128.5. Accordingly, Ontario hereby gives notice, pursuant to Code of Civil
28 Procedure §128.5, of its intent to seek an award of attorneys' fees for attorney services incurred in

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1 opposing said ex parte application. The amount of attorneys' fees sought is \$1,320.00 and is based
2 upon the Declaration of Robert E. Dougherty, attached hereto and served and filed herewith.

3 **THE "REPLY TO OPPOSITION TO MOTION FOR**
4 **APPOINTMENT OF NINE MEMBER BOARD AS**
5 **WATERMASTER FILED BY THE LAW FIRM OF NOSSMAN,**
6 **GUTHNER, KNOX & ELLIOTT, LLP" IS NOT SUBJECT TO**
7 **A MOTION TO STRIKE**

8 MVWD cites Code of Civil Procedure §§ 435 and 436 as the statutes which authorize it to
9 file the instant ex parte application. MVWD's reliance upon CCP § 436 is totally and completely
10 without merit. CCP §436, and its companion statute CCP § 435, pertain only to motions to strike
11 pleadings. They teach you in law school what a pleading is. However, if they have forgotten, the
12 attorneys for MVWD had only to read Code of Civil Procedure § 422.10 which states,

13 *"The pleadings allowed in civil actions are complaints, demurrers,*
14 *answers, and cross-complaints."*

15 A pleading is a document which has a special legal significance.

16 *"The office of pleadings is to outline the issues so that the parties*
17 *may know what is involved in the litigation."*

18 Brunson v. Babb 145 Cal.App.2d 214, 227 (1956). On the other hand, the purpose of points and
19 authorities (such as the challenged "Reply to Opposition ...") is to present legal arguments in
20 support of a party's position on issues that are already before the court. In law and motion practice,
21 the filing of a reply memorandum of points and authorities is not mandatory. A party may choose
22 to present oral argument at the hearing in addition to, or in lieu of, a written reply. And, in regard
23 to the timeliness of filing, Rule 317(c) California Rules of Court provides,

24 *"No paper shall be rejected for filing on the ground that it was*
25 *submitted for filing after the time set forth in this rule. If the court,*
26 *in its discretion, refuses to consider a late filed paper, the minutes or*
27 *order shall so indicate."*

28 //

1 MVWD cannot hope to accomplish anything by the filing of the instant ex parte application
2 other than the harassment of those parties who seek to have CBMWD Board removed from its
3 position as Watermaster. Certainly, MVWD cannot expect that its application will require the judge
4 hearing this matter to develop a form of selective amnesia, thus blocking from consideration during
5 the decision making process the legal arguments which are contained in the subject "Reply to
6 Opposition"

7 **THE CONTENT OF THE EX PARTE APPLICATION IS**
8 **FURTHER EVIDENCE OF ITS FRIVOLOUS NATURE**

9 The PERS issue has been before the court since well before March 11, 1997. The exact date
10 when the issue was first brought before the court could be established, but doing so would require
11 a review of the voluminous documents which have been filed with the court in this case since
12 January 1996. Ontario will, therefore, simply point out that MVWD's statements regarding the
13 "purported PERS issues and assertions that employees are being held hostage" are only contained
14 in MVWD's argument and not in the Declaration of David B. Boyer.

15 MVWD's assertion that "*It was from this reply [to opposition ...] that the court drew the*
16 *incorrect conclusion that the Advisory Committee is the sole policy making body in the basin and*
17 *that this conclusion is supported by Judge Turner's previous ruling.*" (Ex Parte Application, page
18 4, lines 8 through 10) is incorrect. The fact that the Advisory Committee is the policy making body
19 for the basin was a major topic in the "City of Ontario's Response to Memorandum of Points and
20 Authorities in Support of the Motion for the Appointment of a Nine Member Watermaster Board..."
21 which was filed and served on March 7, 1997. The proof of service attached to said document
22 shows that it was served by mail on the attorneys for certain of the parties, including the attorneys
23 for MVWD.

24 **AN AWARD OF SANCTIONS PURSUANT TO CODE OF**
25 **CIVIL PROCEDURE § 128.5 IS APPROPRIATE**

26 CCP § 128.5 authorizes the court to award sanctions under the circumstances as set forth in
27 that section. In this case, the City of Ontario asks for attorney's fees in opposing the instant ex parte
28 application. There is no question that the ex parte application is a bad faith tactic. As no final ruling

1 has been made on the issues before the court, it is ridiculous to suggest that the court can ignore the
2 law applicable to the issues before it on the alleged basis that the court's knowledge of the law was
3 acquired from a document which MVWD claims was not timely filed or served. When it is also
4 considered the CCP §§ 435 and 436 do not authorize the filing of the instant ex parte application.
5 the only conclusion that the court can reach is that the ex parte application is totally and completely
6 without merit.

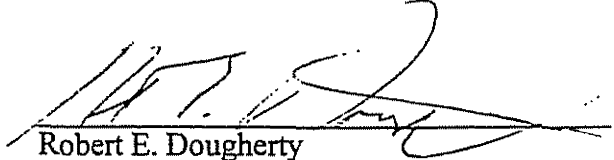
7
8 **CONCLUSION**

9 The ex parte application should be denied. In addition, Ontario should recover from
10 MVWD, pursuant to CCP § 128.5, attorney's fees in the sum of \$1,320.00.

11 Dated: April 12, 1997.

Respectfully submitted,

COVINGTON & CROWE, LLP

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14 By: 
15 Robert E. Dougherty
16 Attorneys for Defendant City of Ontario

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MARKMAN
4/14/97
ONTARIO
STAULA

FILED - West District
San Bernardino County Clerk

APR 14 1997

Wanda DeViney

5 Attorneys for Chino Basin Watermaster
Advisory Committee

6 Robert E. Dougherty, State Bar #41317
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9 Attorneys for Defendant City of Ontario

10

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

12

FOR THE COUNTY OF SAN BERNARDINO

13

WEST DISTRICT

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CHINO BASIN MUNICIPAL WATER
DISTRICT,

)

Case No. RCV 51010

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Plaintiff,

)

Specially assigned to the

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vs.

)

Honorable Judge J. Michael

)

Gunn

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CITY OF CHINO, et al.,

)

DECLARATION OF MARY L. STAULA

19

Defendant.

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IN OPPOSITION TO EX PARTE

)

APPLICATION TO STRIKE REPLY

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)

Date: April 14, 1997

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)

Time: 8:30 a.m.

)

Dept: H

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I, MARY L. STAULA, declare as follows:

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1. I have personal knowledge of the following facts and

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if called upon could competently testify thereto.

26

2. On Friday, March 7, 1997, I served by mail the Reply

27

of Watermaster to the Oppositions to Motion for Appointment of

28

Nine Member Board and Supporting Declarations. At the same time I

1 also served by mail the CITY OF ONTARIO's Response and the
2 Declaration of MICHAEL L. WHITEHEAD.


3 3. I prepared and signed the Proof of Service on March
4 7, 1997 and the Proof of Service was filed with the Court on that
5 day. A true and correct copy of the conformed copy of the cover
6 sheet of the Proof of Service, showing the filing date of March
7 7, 1997, is attached hereto.

8 4. The Proof of Service which I signed on March 7,
9 1997, was inadvertently dated March 11, 1997. March 11, 1997, was
10 the date of the hearing.

11 5. The Reply and other documents which I served on
12 Friday, March 7, 1997, were served more than three full days
13 before the hearing on Tuesday, March 11, 1997.

14 I declare under penalty of perjury under the laws of the
15 State of California that the foregoing is true and correct.

16 Executed on April 14, 1997, at Rancho Cucamonga,
17 California.

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19 Mary L. Staula

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Attorneys for
CHINO BASIN WATERMASTER

FEE EXEMPT

FILED - West District
San Bernardino County Clerk

MAR 07 1997

Wanda DeVinney

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO - WEST DISTRICT

CHINO BASIN MUNICIPAL WATER
DISTRICT,
Plaintiff,
v.
CITY OF CHINO,
Defendant.

) Case No. RCV 51010
)
) PROOF OF SERVICE OF:
) 1) REPLY TO OPPOSITIONS TO
) MOTION FOR APPOINTMENT
) OF NINE MEMBER BOARD
) AS WATERMASTER AND
) SUPPORTING DECLARATIONS
) 2) CITY OF ONTARIO'S RESPONSE
) TO MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT OF THE
) MOTION FOR THE APPOINTMENT OF A
) NINE MEMBER WATERMASTER BOARD;
) DECLARATION OF LLOYD MICHAEL;
) DECLARATION OF MICHAEL L. TEAL.
) 3) DECLARATION OF
) MICHAEL L. WHITEHEAD RE MOTION
) FOR APPOINTMENT OF NINE MEMBER
) BOARD AS WATERMASTER.
)
) Hearing:
) DATE: March 11, 1997
) TIME: 8:30 a.m.
) DEPT: H
)
) Specially assigned to the Honorable
) Judge J. Michael Gunn