

**EXHIBITS**

1. 5/24/2009 Plaintiff's Third Amended Petition
2. 1/31/2011 Affidavit of Margaret Montemayor
3. 2/10/2003 Judge Edwards' Order Regarding E-File designation and Live Date
4. 7/26/2010, 1/11/2011 Orders on Failure to E-File
5. 2/7/2011 Cases in Judge Edwards' Court
6. 8/1/2001 A Judge's Perspective of E-filing
7. 7/14/2010 Defendant The Honorable Frederick E. Edwards's Motion to Dismiss Plaintiff's Second Amended Complaint Under Rules 12(b)(6), 12(b)(1) and 9(b) [Docket No. 56]

**EXHIBIT 1**

CAUSE NO. 07-09-09142

KAREN McPETERS Plaintiff	§	IN THE DISTRICT COURT
	§	
V.	§	9 <sup>th</sup> JUDICIAL DISTRICT
	§	
MONTGOMERY COUNTY, TEXAS Defendant	§	MONTGOMERY COUNTY, TEXAS

**PLAINTIFF'S THIRD AMENDED PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

Now Comes Karen McPeters ("Karen"), hereinafter also referred to as "Plaintiff," who files this her Plaintiff's Third Amended Petition complaining of Montgomery County, Texas, also sometimes referred to herein as "Defendant," and states:

**Discovery**

1. Discovery is to be conducted under Rule 190.3, Texas Rules of Civil Procedure, as Level 2 discovery.

**Parties**

2. Plaintiff Karen McPeters is an individual residing in San Antonio, Texas.
3. Defendant **MONTGOMERY COUNTY, TEXAS** is a governmental entity that has entered its appearance herein.

**Jurisdiction and Venue**

4. Venue is proper in this court because the acts complained of all occurred in Montgomery County. Jurisdiction is proper in the district court because the claims involve damages within the jurisdictional limits of the court and because the district court has original jurisdiction of the parties

and claims under Article V, Section 8 of the Texas Constitution and under the Texas Government Code, Sections 24.007 and 24.008.

### **Factual Background**

5. Karen McPeters began working for Montgomery County in the Collections Department in August of 2003. By the end of October of that year Karen had received two raises and had been assigned additional responsibilities by the department director, Ms. Nadine Jenkins. Unfortunately, Ms. Jenkins had a management style based primarily around ego, power and control. The employees paid a heavy price in the form of belittling, intimidation and manipulation. Karen McPeters was no exception. Unlike most of the others, however, Karen was willing to speak up.

6. This earned her the continuous personal attention of Ms. Jenkins. That attention that would result in Karen taking a leave of absence due to overwhelming stress, and then termination based upon a pretext that included (a) a transfer that never occurred to (b) a job that didn't exist and (c) one for which Karen was not legally qualified.

7. Karen wrote Commissioner Ed Chance in September of 2004 regarding Ms. Jenkins. She received no response. Karen wrote a lengthy protest to Ms. Jenkins, who thereafter increased the pressure and stress for Karen. She lasted eight more months.

8. Karen's stress compelled her to seek medical treatment and, on April 14, 2005, Karen began an indefinite leave of absence that was later approved under the Family and Medical Leave Act (FMLA). Karen left, without first asking for Ms. Jenkins' (unnecessary) permission. This further upset Ms. Jenkins.

9. On April 25, 2005, Karen wrote County Judge Alan Sadler about the problems posed by Nadine Jenkins. Karen received no response. Within days after the letter to Judge Sadler, however,

Ms. Jenkins began emailing Ms. Diane Bass, then Director of Human Resources, about Karen's medical documentation and about filling her position. This was not a coincidence.

10. On June 2, 2005, Karen filed a charge of discrimination with the Texas Workforce Commission ("TWC"), Civil Rights Division, and with the U.S. Equal Employment Opportunity Commission ("EEOC"), based upon purely racial comments made by Nadine Jenkins. Within days, however, Ms. Jenkins resumed the emails to Ms. Bass regarding how to deal with Karen within the confines of the FMLA. This was not a coincidence.

11. Additionally, Ms. Bass was now reporting the "latest developments" to Ms. Suzanne Laechelin, the Civil Litigation Chief in the County Attorney's Office, and was advising others to "proceed cautiously." Karen extended her medical leave in thirty day increments, providing a physician's report for each extension. Interestingly, the County Attorney himself, Mr. David Walker, became personally involved in each grant of extension.

12. On September 6, 2005, the EEOC issued Karen a "right to sue" letter stating that the investigation had been unable to conclude that a statutory violation had occurred. This was not surprising, since racial comments were at issue and both Karen and Ms. Jenkins were members of the same protected class. Karen made plans to resume working on October 3, 2005 and notified Ms. Bass, whose prior letters to Karen emphasized that she was expected "to return to work."

13. On September 16, 2005, Ms. Bass wrote Karen an interesting letter in which Ms. Bass purports to quote Karen, twice, as having "stated" that the work in the collections department was stressful. The letter also recommends that Karen apply for an open position as a Dispatcher in the Sheriff's Department. On that *same day*, Mr. David Bluestein (then First Assistant District Attorney) received a fax from the Texas Department of Public Safety ("DPS") Crime Records Service which, among other things, confirmed that *dispatch* operators and other criminal justice

agency employees with a Class A misdemeanor, deferred adjudication, were permanently disqualified from employment involving access to criminal records. The identical date and the suggestion that Karen seek a criminal justice job position would prove not to be coincidences. Seven years earlier, Karen had completed a deferred adjudication for a Class A misdemeanor.

14. On September 28, 2005, Karen wrote Ms. Bass to explain that the Sheriff's Dept. position would involve working nights and weekends, thus preventing Karen from caring for her young children, ages 8 and 11. In her letter, Karen identified other open positions for which she had applied, and said that if she didn't hear from them she would be returning to the Collections Department as scheduled on October 3, 2005.

15. Karen also specifically corrected Ms. Bass' claims that Karen had said that working in Collections was stressful. It was working for Nadine Jenkins that was stressful, not the work itself. Simply put, "it was simply Nadine." Meanwhile, plans had been made to discredit and fire Karen McPeters.

16. On October 3, 2005, her first day back from leave, Diane Bass, director of Human Resources, sent Karen to interview with the District Attorney's office for a clerk position that had never been posted. It did not exist. This was Karen's second consecutive referral to a criminal justice department, even though other county administrative job postings were available. And, this was no coincidence.

17. Karen reported to the District Attorney's office for the interview as suggested by Ms. Bass and others. Even though Karen was simply seeking a position as a clerk, Karen was interviewed by Mr. Michael McDougal (then the District Attorney), Mr. David Bluestein (then First Assistant) and Ms. Barbara Morgan (then Office Manager). In a remarkable series of events, Karen was put to work on the morning of October 3 and then terminated within 24 hours.

18. In a letter dated October 4, 2005, Mr. Bluestein told Karen that she was being terminated because she had been asked whether she had ever been arrested and had answered “no” (a claim Karen vigorously disputes in this case). Mr. Bluestein’s letter goes to unusual lengths to explain the basis for termination, and to recite what Karen purportedly said (“tearfully said you were sorry”).

19. Mr. Bluestein requested and received DPS regulations *18 days earlier* on September 16 concerning access to TLETS (a criminal database). Because of the deferred adjudication for the misdemeanor offense, Ms. McPeters could not hold the very job position she had been sent to occupy. Parenthetically, the same would have been true of the Sheriff’s Office position in dispatch. This was not a coincidence.

20. What Mr. Bluestein may not have known was that the fact of an arrest was irrelevant to the job position for which Ms. McPeters interviewed. Only final adjudication was relevant. There is no longer serious debate about the integrity of the District Attorney’s office in general and of Mr. McDougal and Mr. Bluestein in particular. They used county computers, autopsy photos and drug forfeiture funds for unauthorized and/or unlawful purposes. They also knowingly employed an individual on probation for a drug offense, and whose drug addiction had been openly admitted by her attorney. In an ultimate irony, at the request of Ms. Barbara Morgan, this individual was *promoted* to a Clerk IV position in November of 2005, one month after Karen was fired.

21. Although the level of detail in Mr. Bluestein’s letter of October 4 was remarkable, it pales in comparison to the memos prepared by Ms. Morgan and Ms. Bass. Ms. Morgan prepared a lengthy, single spaced memo in all capital letters. Although the memo is clearly dated 10-03-05, it describes events occurring the following day as well, a remarkable and revealing oversight.

22. Ms. Bass' first memo is to Ms. Suzanne Laechelin, reporting a conversation with Karen. Ms. Bass' second memo, a "memo to file regarding Karen McPeters" that is now partially obliterated, is also a single spaced document, approximately one page in length. The "documentation," taken as a whole, is stronger evidence of pretext than of any misconduct by Karen McPeters (a conclusion also reached by the EEOC and the TWC.

23. Karen had been sent to "interview" for the law enforcement jobs. It is critical to note that she was still *employed* by Montgomery County until fired by the District Attorney's office on the pretext described above. In fact, on the Payroll Change Request Form signed by former District Attorney McDougal himself and sent to Commissioners Court on October 4, 2005, Karen's status is noted as "Return from FMLA; transfer to new dept." Mr. McDougal also signed a second form, also submitted on October 4, noting that Karen was "discharged" at 10:15 a.m.

24. Interestingly, the Montgomery County Employee Policy Manual expressly provides at Section 2.5-1 that employees may transfer "with the approval of the elected official or department head of the receiving department." No approval could have been issued by the District Attorney, because no background check had been performed. After the background check she was disqualified. Karen was never really transferred. She was just set up.

25. Karen sought unemployment benefits through the TWC, a quasi-judicial governmental administrative agency. In response, the Defendant made the following misrepresentations:

- A. "Ms. McPeters interviewed for a position in the District Attorney's office and and was transferred to this Department when she returned from FMLA on 10.03.05." [no transfer occurred]
- B. "Ms. McPeters had during an interview with the District Attorney's office, answered certain questions that were later found to be not true. As a routine procedure for hiring employees for the District Attorney's office, a background check is performed. During this review it was discovered that a discrepancy between interview responses and background information existed." [no "hiring" actually took place]



26. On October 26, 2005, the TWC issued its decision: "Our investigation found your employer discharged you from your last work for a reason that is not misconduct connected with the work." This finding is final as a matter of law and is not subject to dispute in this case.

27. The reason for the "transfer" and the firing was described by the EEOC as follows:

**"Based on the evidence, it appears that more likely than not, Respondent retaliated against [Karen McPeters] for filing a Charge of Discrimination, when she was discharged after she received her Dismissal and Notice of Right to Sue on September 6, 2005."**

#### **Retaliation in Violation of the Texas Government Code**

28. The Texas Government Code provides at Section 554.002 that a governmental entity may not terminate the employment of a public employee who in good faith reports a violation of the law to an appropriate law enforcement authority. Karen's first report to the EEOC was such a report. Karen was terminated in retaliation based upon the pretext described above, as found by the EEOC investigation and the TWC investigation.

29. The Code further provides, at Section 554.003, that a public employee whose employment is suspended or terminated is entitled to sue for actual damages, court costs and reasonable attorney's fees. Accordingly, Karen McPeters seeks the recovery of actual damages, including past back pay (wages lost during the period of termination), emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life pursuant to Section 554.003(b) and (c).

30. Karen McPeters also seeks recovery of her future damages, in an amount not to exceed \$250,000.00, pursuant to Section 554.003(c), in addition to her costs and reasonable attorney's fees.

31. Karen McPeters respectfully notes that sovereign immunity is waived and abolished to the extent of liability for the relief allowed under Section 554 of the Government Code.

#### **Retaliation in Violation of the Texas Labor Code**

32. In addition, and in the alternative if necessary, the Texas Labor Code provides at Section 21.055 that an employer commits an unlawful employment practice if the employer retaliates against a person who opposes a discriminatory practice, makes or files a charge, files a complaint, or assists in any manner in an investigation. Karen McPeters was such a person as to the Defendant Montgomery County in 2005. Retaliation included the “transfer” and termination of Karen McPeters in October of 2005. The conduct complained of herein was intentional and planned.

33. The Code further provides, at Section 21.056, that an employer commits an unlawful employment practice if it aids, abets or incites a person to engage in a discriminatory practice. In this connection, Plaintiff contends that it was the custom and/or policy of Montgomery County to allow, aid, abet and/or incite the conduct complained of herein, with policymakers including the District Attorney, First Assistant District Attorney, Director of Human Resources, County Attorney and Chief of Civil Litigation in the County Attorney’s office. Further, the conduct and policy described herein was ratified by the County Commissioners.

34. The Code further provides at Section 21.2585 that, upon a finding of an unlawful intentional employment practice, a court may award compensatory damages to include past emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life as well as future damages of the same character in an amount not to exceed \$300,000, all of which Plaintiff seek to recover in addition to a reasonable attorney’s fee, costs, and reasonable expert fees pursuant to Section 21.259 of the Labor Code.

#### **Retaliation Under the United States Code, Title 29**

35. In addition, and in the alternative if necessary, the United States Code provides at Title 29 (Labor), Section 2615, that it shall be unlawful for any employer to discharge any individual for opposing any practice made unlawful under this subchapter (discrimination) and that it shall be

unlawful for any person to discharge any individual because such individual has filed a charge (reporting discrimination) or caused to be instituted any proceeding against the employer. Karen McPeters was such a person during her FMLA leave in 2005 for which Defendant engaged in retaliation by “transferring” Plaintiff to the District Attorney’s office and then firing her under the pretext previously described.

36. Section 2617 further provides that any employer who violates provisions of the subtitle shall be liable to any eligible employee for damages equal to any wages, salary, employment benefits, or other compensation denied or lost, plus the interest on these damages, plus reasonable attorney’s fees and costs, to include reasonable expert witness fees, all of which Plaintiff seeks to recover under the United States Code.

**Retaliation Under the United States Code, Title VII**

37. In addition, and in the alternative if necessary, the United States Code provides at Title VII, 42 U.S.C. § 2000e, *et. seq.*, that:

It shall be an unlawful employment practice of an employer to discriminate against any of his employees ... because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this subchapter.

38. Plaintiff McPeters engaged in a protected activity as is shown herein above. Defendant carried out an adverse employment action by firing Plaintiff McPeters, and a causal connection existed between her charge of discrimination, and retaliation for the charge - her firing, because:

(a) Plaintiff McPeters’ job had not been eliminated as was falsely represented to her by the Human Resources Director, Diane Bass; it was still open;

(b) Nadine Jenkins, director of the Collections Department, told Diane Bass that she would not allow Plaintiff McPeters to return to her position in the collections department after her

FMLA leave. Her action was in retaliation for Plaintiff McPeters filing a racial discrimination complaint against Ms. Jenkins and/or for taking FMLA leave.

(c) Other Montgomery County job positions existed at the time of Plaintiff McPeters return from FMLA leave, for which Plaintiff McPeters was qualified, and which positions were not discussed with or made available to Plaintiff McPeters by the Human Resources Director, Diane Bass;

(d) Plaintiff McPeters was sent to apply for a job with the District Attorney's office, a job for which she was disqualified. Ms McPeters' could not be granted access to the Texas Law Enforcement Telecommunications System ("TLETS"), a requirement of the position with the District Attorney's office; and

(e) the Assistant District Attorney, Mr. David Bluestein, lied in his purported letter of dismissal when he intentionally misrepresented his conversation with Plaintiff McPeters.

39. One, or more, of the above actions by Defendant Montgomery County, by and through its agents, was retaliation against Plaintiff McPeters for filing a discrimination charge and/or for taking FMLA leave. Defendant's conduct is a continuing course and pattern of conduct. The action by Defendant is prohibited under 42 U.S.C. § 2000e-3(a) and 29 U.S.C. § 2601, *et. seq.*

40. Defendant has damaged Plaintiff McPeters, including causing her loss of pay. Plaintiff seeks recovery of her damages under 42 U.S.C. § 2000e, *et. seq.*,

#### **Conditions Precedent**

41. All conditions precedent to filing any of the causes of action previously alleged in the alternative have occurred or have been waived.

#### **Relation Back of Claims**

42. In the unlikely event that any of the causes of action previously alleged in the alternative are found to state a new or different ground of relief, Plaintiff respectfully asserts that all such claims arise out of the conduct previously alleged against the Defendant and relate back to the date on which the original claims were filed pursuant to Section 16.068 of the Texas Civil Practice and Remedies Code.

#### **Ratification**

43. Plaintiff McPeters has been damaged by the actions of Montgomery County, Texas, by and through its commissioners, supervisors, agents and employees (throughout this petition "Montgomery County, Texas"). All actions complained of herein have been ratified by Montgomery County, Texas and its commissioners through the failure to repudiate the statutory violations described herein. The Montgomery County employees, including the District Attorney, First Assistant District Attorney, Director of Human Resources, County Attorney and Chief of Civil Litigation in the County Attorney's office, acted as agents of one another and of the County and denied Karen the benefits of the laws, thereby damaging her. They, jointly and severally, authorized the conduct alleged herein, and, or, in the alternative, by silence and failure to repudiate the actions of the other employees, each employee adopted, confirmed and ratified the wrongful conduct on Defendant's behalf. It was the custom and/or policy of Montgomery County to allow, aid, abet and/or incite the conduct complained of herein, and the conduct and policy described herein was ratified by the County Commissioners.

#### **Damages**

44. As a direct and/or proximate result of the actions of the Defendant, Plaintiff has sustained actual and legal damages for which Plaintiff is entitled to have this Court grant a judgment against the Defendant. The herein-described wrongful actions, statements, and/or omissions by Defendant

are the producing cause of Plaintiff McPeters' herein-described damages. Montgomery County, Texas actions, through its employees and policy makers, have been knowing, willful, and with complete indifference to the rights of Plaintiff McPeters. The actions have been intentional and without just cause or excuse. Plaintiff McPeters is entitled to exemplary damages.

45. Plaintiff McPeters has hired Robert L. Mays, Jr. as her attorney and has agreed to pay reasonable and necessary attorney's fees, costs and expenses. Plaintiff McPeters requests the court to award her damages, equitable relief, attorney's fees, expert witness fees, costs and expenses, as an element of damages, and/or pursuant to Tex. Civ. Prac. & Rem. Code §38.001, *et. seq.*, 29 U.S.C. § 2617(a), Title VII of the Civil Rights Act, and pursuant to other statutory provisions.

46. Plaintiff is further entitled to prejudgment and post- judgment interest as, when and at the rates allowed by law and/or equity.

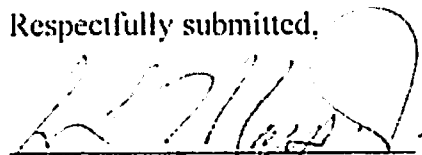
47. Plaintiff's damages are in an amount within the jurisdictional limits of this Court.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Karen McPeters requests that, upon the verdict of the jury, the trial court enter judgment against the Defendant, Montgomery County, Texas, as sought herein, to include:

- (i) actual damages in the past and in the future;
- (ii) prejudgment interest;
- (iii) reasonable attorney's fees;
- (iv) reasonable expert witness fees;
- (v) costs of court;
- (vi) post-judgment interest as allowed by law, and
- (vii) for such other relief, whether in whole or in part, whether general or special, at law or in equity, to which Plaintiff Karen McPeters may, by this pleading or proper amendment hereto, show herself entitled.

**TRIAL BY JURY IS RESPECTFULLY DEMANDED.**

Respectfully submitted,



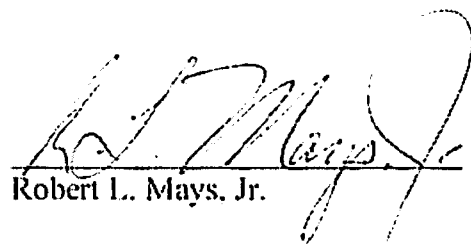
Robert L. Mays, Jr.  
Petroleum Towers II  
8626 Tesoro Drive, Suite 820  
San Antonio, Texas 78217  
Phone: 210-657-7772  
FAX: 210-657-7780  
TBN: 13308200  
Attorney for Plaintiff Karen McPeters

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of Plaintiff's Third Amended Petition was delivered in accordance with Tex. R. Civ. P. 21a to:

Rayborn C. Johnson, Jr.  
Assistant County Attorney  
207 West Phillips, Suite 100  
Conroe, Texas 77301

on this the 24th day of May, 2009.



Robert L. Mays, Jr.

**EXHIBIT 2**



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

**KAREN McPETERS**, individually, and on §  
behalf of those individuals, persons and entities §  
who are similarly situated §  
Plaintiff §

vs. §

CIVIL ACTION NO. 4:10-CV-01103

JURY

**THE HONORABLE FREDERICK E.** §  
**EDWARDS; BARBARA GLADDEN** §  
**ADAMICK, DISTRICT CLERK;** §  
**MONTGOMERY COUNTY, TEXAS, and** §  
**REED ELSEVIER, INC. d/b/a LexisNexis** §  
Defendants §

**AFFIDAVIT**

STATE OF TEXAS )(   
 )(   
COUNTY OF BEXAR )(

BEFORE ME THIS DAY personally appeared Margaret Montemayor, the undersigned Affiant, who being by me duly sworn, deposed and stated as follows:

“My name is Margaret Montemayor; I am over the age of eighteen (18) years and am fully competent to make this Affidavit and have personal knowledge of all of the facts recited herein, and they are all true and correct.

“I was elected as District Court Clerk in Bexar County, Texas in Nov. 5, 2002. I held that office for eight (8) years, until 2011. I performed the same duties as Barbara Adamick, the District Clerk of Montgomery County, Texas.

“While I was district clerk in Bexar County, we had electronic filing of documents. We accepted documents filed on paper; litigants and their lawyers were also able to file documents electronically through Texas On-Line. On-line E-filing was optional.

"I have reviewed the charges of the Montgomery County District Clerk, as those charges are posted on-line. I have reviewed the charges of the Bexar County District Clerk's office, and compared them with Montgomery County. I have reviewed the statutes concerning the duties of a district clerk.

"The charges authorized by statute in the State of Texas include provisions for electronic record keeping. Those charges are named the records management and preservation fee - \$10.00, the court record preservation fee - \$10.00, and the records archive fee - \$5.00. The charges are paid by a litigant when a lawsuit is filed. *Tex. Gov't Code* §§§ 51.317(b)(4), 51.708, 51.305. *See also* § 101.061.

"I have reviewed the charges by LexisNexis for use of their *fileandserve* E-filing system, which are \$7.00 for filing and \$8.00 for service. Their \$7.00 charge duplicates the charge by the Montgomery County District Clerk at the time a lawsuit is filed.

"In other words, a litigant cannot be required to pay both the District Clerk and LexisNexis for 'E-filing.' The District Clerk can accept paper filings and then scan them into her E-file system. Or, a litigant can use and pay LexisNexis for E-filing, but then that litigant cannot also be required to pay the District Clerk for the records management and preservation fee, the court record preservation fee and the records archive fee.

"I have reviewed the policy of the Montgomery County District Clerk in rejecting paper filings. That policy is contrary to the statutory duties of a district clerk, because the District Clerk is required to accept and file documents tendered to her. A District Clerk may not cancel her file-stamp for her court.

"In my opinion, the charges by LexisNexis to litigants for on-line E-filing are unlawful because:

- (a) its charges duplicate charges previously collected by the District Clerk for identical services;
- (b) a District Clerk may not reject paper filings, assuming they are in the proper court and county;
- (c) a District Clerk may not cancel a file stamp, assuming the document is in the proper court and county;
- (d) a District Clerk must authorize by signing for any service for which fees are collected as a part of litigant being able to go to court;
- (e) the amount of the charges by LexisNexis is excessive and unreasonable; and

(f) the availability of a public terminal in the office of a District Clerk is not a reasonable alternative to filing documents under the *Texas Rules of Civil Procedure*.”


This concludes my testimony.

SIGNED on this the 31<sup>st</sup> day of January, 2011.

  
Margaret Montemayor  
Affiant

SUBSCRIBED AND SWORN TO BEFORE ME on this the 31<sup>st</sup> day of January, 2011, to certify which witness my hand and official seal of office.



  
Notary Public  
State of Texas  
My Commission Expires: 5/12/13

CERTIFICATE OF SERVICE

I certify that on February \_\_\_\_\_, 2011, after filing this affidavit, each counsel for Defendants will be served via the court's ECF system.

\_\_\_\_\_  
Robert L. Mays, Jr.

**EXHIBIT 3**

**ORIGINAL**

Cause No. 07-09-09142

9<sup>th</sup> JUDICIAL DISTRICT COURT  
MONTGOMERY COUNTY, TEXAS

RECEIVED AND FILED  
FOR RECORD  
8 O'clock P.M.  
FEB 10 2003  
BARBARA GLADEN ABANICK  
MONTGOMERY DISTRICT CLERK  
MONTGOMERY COUNTY TEXAS

**ORDER REGARDING E-FILE DESIGNATION AND LIVE DATE**

As of January 1, 2000, all civil cases filed in the 9th District Court of Montgomery County will be electronically filed as described and governed by the Local Rules Regarding Electronic Filing. Consequently, the Court, sua sponte, hereby designates the cause number, \_\_\_\_\_ in the Ninth District Court of Montgomery County, Texas, as such an e-file case. Accordingly, the Court orders that in this cause the District Clerk implement fully the Local Rule Regarding Electronic Filing, approved by the Supreme Court on September 16, 1997. A copy of the Local Rule Regarding Electronic Filing can be obtained in the office of Judge Edwards or the Montgomery County District Clerk's Office.

**What Must be Filed Electronically.** No pleadings or party-generated documents may be filed in paper form, but must be filed electronically through the e-file system, unless a document meets one of the exceptions named below.

**All answers must be filed electronically.** Answers filed in paper form will not be accepted.

**Documents That Need Not be Filed Electronically.** Documents may still be filed conventionally if 1) a party has leave of Court to do so, 2) the document is the Original Petition or a Return of Service, or 3) the document is an exhibit, appendix, or "image" document exceeding 50 pages in length (see explanation below). Actions brought by the State of Texas or Child Protective Services as well as Adoption Actions are exempt from e-filing.

**Exhibits.** Original exhibits to documents filed electronically must be "scanned in" and filed electronically as well if the *exhibits* number less than fifty pages. If the exhibits total over fifty pages in length, they may be marked clearly as to which motion they pertain and filed with the District Clerk.

A party wishing to file voluminous exhibits conventionally should 1) electronically file a notice indicating that there are conventional "paper" exhibits on file in the District Clerk's Office, 2) file the exhibits in the District Clerk's Office, and 3) serve other parties with copies of the conventionally-filed exhibits as normally required by the Texas Rule of Civil Procedure.

Please note that according to the Local Rule for E-filing, any original signature page on affidavits, verifications, or other sworn documents that is not filed with the Clerk in paper form "shall be maintained and made available, upon reasonable notice and during business hours, to other counsel and to the court."

EXHIBIT "O"

**Minute** PAGE 5 OF 7  
Date: 12-13-06

**New Divorce and Annulment Cases That Are Resolved Within 90 Days.** As of January 1, 2001, all original petitions for divorce or annulment that are resolved within 90 days are not required to be filed electronically.

In addition, inventories and appraisal documents in all family law cases may no longer be electronically served with the Court, due to privacy concerns. Please exchange this information to opposing counsel, but without actually serving the Court via e-filing. However, you must serve the Court with a letter noticing that the exchange of documents was made and on what date.

**How to File Electronically.** For information on how to use electronic filing, parties are instructed to contact CourtLink Customer Service at 1-888-529-7587.

In short, parties will be presented with two options. They may either: 1) become a subscriber through the Internet to the e-file system or 2) bring their filings in the form of 3-1/2" IBM (or compatible) formatted disc to the public terminal located in the District Clerk's Office and upload the pleadings at no charge.

Although there is no fee involved in subscribing to the e-file system through the Internet, a minimal fee is assessed for each filing and service delivery made through the system. The e-filing system will "serve" all parties and the court through the Internet or via facsimile, so it will not be necessary for a party choosing to become a subscriber to serve other parties in paper form.

However, parties wishing to exercise their option to file through the public terminal must still serve copies on other parties *in paper form*, as is usually required by the Texas Rules of Civil Procedure.

**Consequences of Failure to File in Accordance with this Order.** The District Clerk shall not accept any pleadings in paper form, and shall not use imaging technology to convert documents from paper to electronic form for the parties. Any documents submitted in paper form will be rejected by the District Clerk without further notice to submitting counsel. *Documents so rejected will be regarded as "unfiled," even if the clerk, in error, file-stamps the incorrectly filed documents.*

If the electronic filing is not filed with the Court because of 1) an error in the transmission of the document to the Vendor which was unknown to the sending party, or 2) a failure to process the electronic filing when received by the Vendor, or 3) other technical problems experienced by the filer, the Court may upon satisfactory proof enter an order permitting the document to be filed nunc pro tunc to the date it was first attempted to be sent electronically.

If there are any questions regarding e-filing, please contact the following:

- CourtLink Customer Service at (888)529-7587;
- Donna Owen, Briefing Attorney, 9th District Court at (936) 539-7866
- Christian Brown, CourtLink eFile Project Consultant, (770) 919-7571
- The Official Website for Montgomery County, [www.co.montgomery.tx.us](http://www.co.montgomery.tx.us)

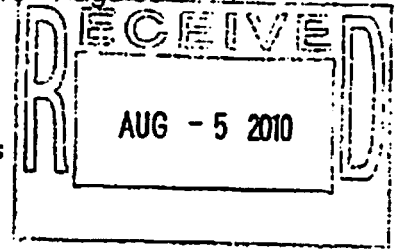
Signed this 10th day of February, 2003.

  
A handwritten signature in black ink, appearing to read 'Fred Edwards', is written over a horizontal line. Below the line, the text 'JUDGE FRED EDWARDS' is printed in a small, sans-serif font.

The Honorable Fred Edwards

**EXHIBIT 4**





Pam Robichaux, Manager

936-539-7855 Conroe

281-353-9791 Houston

Electronic Filing Notification Letter

Cause No: 07-09-09142 CV Date: 7-26-10  
Court: 9th

The following instruments were received in our office in hard copy format. Per the Electronic Filing Order issued by the judge in this case and in accordance with the Montgomery County Local Rule 6 Electronic Filing, these instruments must be filed electronically at the public access terminal located at the District Clerk's office or via [www.lexisnexis.com/fileandserve](http://www.lexisnexis.com/fileandserve).

Your pleadings have been accepted and filed in hard copy format, but the Judge's Electronic Filing Order requires you to also file them electronically. In the future, you must file your documents electronically as ordered by the court.

Attached is a copy of the following:

9<sup>th</sup> District Court

•Order On Failure To E-File

•Order Regarding E-file Designation and Live Date

410<sup>th</sup> District Court Standing Order Designating Case for Electronic Filing

If you would like information about the E-file system, you may contact LexisNexis toll free at 866-293-3957. Also if you have further questions, please call me at 936-539-7855.

Thank you for your attention to this matter.

Barbara Gladden Adamick  
District Clerk

  
Deputy

EXHIBIT "O"

PAGE 1 OF 7

CAUSE NO. 07-09-09142 CV

9<sup>TH</sup> JUDICIAL DISTRICT COURT  
MONTGOMERY COUNTY, TEXAS

ORDER ON FAILURE TO E-FILE

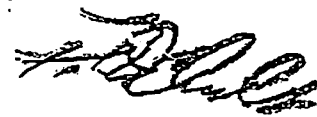
On 09-10-07, this case was designated as an e-file case pursuant to the Montgomery County Local Rule Regarding E-file, Texas Supreme Court Docket No. 97-9155 (1997).

Accordingly, all documents must be e-filed in compliance with the Local Rules and this Court's "ORDER REGARDING E-FILE DESIGNATION AND LIVE DATE." Any documents that are conventionally filed but not e-filed will not be considered by the Court until they are e-filed and the Court receives notice of the e-filing.

Further violations of the e-filing designation may result in a show cause hearing to determine compliance with the order.

The parties are hereby ORDERED to electronically file the document(s) in the proper form pursuant to the Local Rules of Montgomery County, Texas via the designated electronic filing system.

SIGNED on this 26 day of July, 2010.



\_\_\_\_\_  
PRESIDING JUDGE

CAUSE NO. 07-09-09142

9<sup>TH</sup> JUDICIAL DISTRICT COURT  
MONTGOMERY COUNTY, TEXAS

ORDER ON FAILURE TO E-FILE

On 9-10-07, this case was designated as an e-file case pursuant to the Montgomery County Local Rule Regarding E-file, Texas Supreme Court Docket No. 97-9155 (1997).

Accordingly, all documents must be e-filed in compliance with the Local Rules and this Court's "ORDER REGARDING E-FILE DESIGNATION AND LIVE DATE." Any documents that are conventionally filed but not e-filed will not be considered by the Court until they are e-filed and the Court receives notice of the e-filing.

Further violations of the e-filing designation may result in a show cause hearing to determine compliance with the order.

The parties are hereby ORDERED to electronically file the document(s) in the proper form pursuant to the Local Rules of Montgomery County, Texas via the designated electronic filing system.

SIGNED on this 11 day of January, 2011



\_\_\_\_\_  
PRESIDING JUDGE

**EXHIBIT 5**

**Select Court and/or Case for Filing**

File and/or Serve in an **Existing Case**     File a **New Case**     File and/or Serve in **Multiple Cases**

Enter information in one or more boxes and click **Find**. Selection of a Court is required

State:

Case Name:

Court:

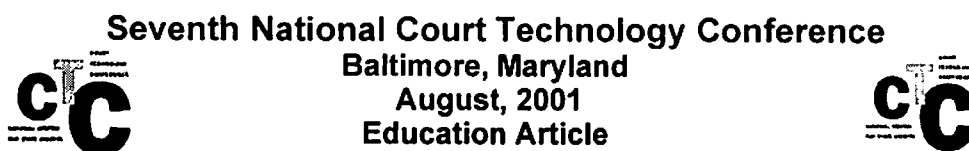
Case Number:

To select a case for filing, click  beside the case.

**Case List** 1 through 1000 of 8268 [Next>>](#) Show  results per page

<input type="checkbox"/>	<u>Case Number</u>	<u>Case Name</u>	<u>Case Type</u>	<u>Case Class</u>	<u>State</u>	<u>Court</u>	<u>County</u>
<input checked="" type="checkbox"/>	00-01-00006E	NONSUIT W/OUT PREJUDICE Rippy, Gary vs Matthew Robert LeBlance et al	Unknown	Civil	TX	Montgomery 9th District Court	
<input checked="" type="checkbox"/>	00-01-00332E	DISMISSED Dubose, Tracy et al vs O S Wyatt Jr	Declaratory Judgment	Civil	TX	Montgomery 9th District Court	
<input checked="" type="checkbox"/>	00-01-00409E	AGREED JUDGMENT Imperial Oaks Improvement Association vs Stephen Peter	Foreclosure	Civil	TX	Montgomery 9th District Court	
<input checked="" type="checkbox"/>	00-03-01364E	DWOP Quinn, Daniel B et al vs Howard L Huddleston et al	Contract	Civil	TX	Montgomery 9th District Court	
<input checked="" type="checkbox"/>	00-05-02825E	DWOP Spoonemore, Sharon C et al vs Randy Delot Sebastian	Personal Injury Involving Motor Vehicle	Civil	TX	Montgomery 9th District Court	
<input checked="" type="checkbox"/>	00-06-03341E	REMOVED TO FEDERAL COURT Garcia, Kevin A vs Goldman Sachs Group Inc et al	Contract	Civil	TX	Montgomery 9th District Court	
<input checked="" type="checkbox"/>	00-06-03823E	DISMISSED Fisher, Joy vs Neil David Hull	Personal Injury Involving Motor Vehicle	Civil	TX	Montgomery 9th District Court	
<input checked="" type="checkbox"/>	00-06-03851E	JUDGMENT Gibson, Kenneth Dean et al vs Bret Wayne Simpson et al	Personal Injury Involving Motor Vehicle	Civil	TX	Montgomery 9th District Court	
<input checked="" type="checkbox"/>	00-06-03875	Sacchieri, Keith F et al vs Lipar Group Inc et al	Fraud	Civil	TX	Montgomery 9th District Court	
<input checked="" type="checkbox"/>	00-08-04776E	DISMISSED Frink, Frederick F et al vs Atlas Van Lines Inc	Negligence	Civil	TX	Montgomery 9th District Court	
<input checked="" type="checkbox"/>	00-08-05362E	NONSUIT Hinna, Donna et al vs Bridgestone Firestone Inc et al	Product Liability	Civil	TX	Montgomery 9th District Court	

**EXHIBIT 6**



## **A Judge's Perspective of E-filing**

By Fred Edwards

### **Overview**

The 9th District Court, presided over by Judge Fred Edwards, requires all civil cases be filed electronically and the District Clerk's office is not permitted to accept paper filings without the Court's approval. Litigants or their attorneys may file utilizing the internet from a public access terminal located at the courthouse, their office, home or where ever access to the internet is available. The 9th District court currently has some 1500 civil cases pending which includes class actions, complex tort cases, personal injury, commercial litigation, asbestos cases, and family law matters.

Currently the 9th District Court is the only court in the State of Texas that requires all civil cases to be filed electronically. The 9th District Court is located in Montgomery County, Texas, which is directly north of Houston. The County has five District Courts and three County Courts-at-Law. The population of the county is approximately 300,000 citizens with the second highest growth rate in the State. The area is a mixture of planned communities, farms, and small cities. It is typical of the suburban sprawls that are found surrounding our major metropolitan cities.

### **A. Jurisdiction and Basic Court Structure**

The 9th District Court is a general jurisdiction court that hears cases involving criminal and civil matters. In Texas, a district court is the highest trial court in the judicial system. Criminal cases incorporate felony prosecutions, including capital murder. Civil cases include family law matters and civil disputes ranging from \$500.00 to infinity. District Judges are elected State officials and their salary and benefits are controlled by the Texas Legislature. The local county commissioners, however, control the judge's staff's salary and benefits. All equipment for the courts or the clerk's office is funded locally through the county. Although there is an effort to have state funding for computers for all courts, currently, computers and high-tech equipment are available only through state and federal grants for specific programs. The District Court personnel normally consist of a court reporter, court coordinator/secretary and, of course, the judge. Clerks are under the direction of the District Clerk, an elected position, whose budget is under the control of county officials.

### **B. Power Structure**

Since the State Office of Court Administration does not have control of the funds that would normally be utilized by the courts for personnel or equipment, it does not have the power to dictate or control the courts. The courts are left to their own initiative and authority to obtain such funding. The Texas Supreme Court promulgates rules and procedures. Case management and assignments are handled on a local basis, county by county.

Power has many shapes. It is money; it is information; it is authority. The true definition of power is the authority to control money and information. A Judge or administrator that controls the money and information thus has true power in the justice system.

### **C. A Brief History of Information Control**

Historically, when cases were filed before a judge for review or a decision, the court controlled not only the disposition of the case, but the actual file itself. A clerk who was charged with the care of the file and documents contained therein assisted the court. The clerk was answerable to the judge. As the number of cases grew, so did



the problem of storage and care of the files. Over time, the judge lost control over the clerk and thus the files, how they were stored, the form in which they came before the court, and the manner in which lawyers and litigants dealt with the volume of paper. That loss of control is the primary crisis facing our courts today.

#### D. The Clerk's Office

In the Middle Ages the word "clerk" was created to refer to a monk who studied and wrote verse. Its derivative "clerk" has been misused and overused ever since. It can refer to the prestigious position of Clerk of the United States Supreme Court or to a sales clerk at the local convenience store. Whether you are referring to a District Clerk, County Clerk, or file clerk, someone somewhere is responsible for maintaining and storing the files of the courts. The employees of the clerk's office are generally high school graduates without any legal training. They are on the low end of the county's pay scale. After all, in the minds of the commissioners that set salaries, they are only "clerk's". They are often instructed by rote. "We have always done it this way" is the battle cry of most governmental employees and should be engraved in stone above the doors of the courthouse entrance. One person, the judge, is capable of bringing regimented clerks and reluctant staff out of the 19th century.

#### E. Mass Tort Litigation

The onslaught of litigation is led by mass torts. It is found in every jurisdiction. It is fen-phen; it is asbestos; it is water rights. Mass torts are the means in which a consumer society survives. The filing of mass tort litigation into the majority of out-of-date clerk's offices around the country is basically e-commerce communicating with cans and string. The legal industry is built upon money. Money is generated by billings. Billings are generated by time sheets, and time sheets reflect filings. Filings are paper, reams of paper, boxes of paper, tons of paper. All this paper is headed to one place, the clerk's office. The clerk's office responds to this onslaught similar to Lucille Ball in I Love Lucy's famous candy factory line sequence in which chaos results. The only response of the clerk's office is to keep accepting the onslaught of paper. They do not index the paper, they do not correlate the paper, and they do not organize the paper. They only store the paper. A clerk's office facing mass tort litigation is similar to the medieval clerk copying *Gone with the Wind* with his ink quill with a one-hour deadline. An effort will be made, but it will be a miserable failure. The solution is to return the control of the paper, the file and the clerk to the one person who is ultimately responsible for the Judiciary economy, the judge.

#### F. E-filing

Electronic filing accomplishes that goal. Electronic filing permits the rapid storage of documents in an organized and rational manner. Electronic filing utilizes the web to file documents: exhibits, briefs and other case-related data directly with the court. In the 9th District Court, all civil cases are required to be e-filed. Montgomery County contracted with CourtLink, a private company, to provide service for the courts, the clerk and the lawyers. Currently, three district courts in Montgomery County, Texas require e-filing in selected cases. Courts in Jefferson County, Montgomery County, and El Paso County now require e-filing in complex tort litigation. Once a case is filed in an e-file court, the clerk's office scans in the hard copy paper petition, the case is noted as an e-file case and no further paper is accepted by the clerk's office. Once assigned to an e-file court, the lawyers sign on with CourtLink and all further filings are filed over the Internet. CourtLink **charges a few cents per page**. The lawyer does not incur postage costs, delivery costs or personal filings by staff. All filings are immediately noticed to the clerk's office, the judge's office, the opposing parties, and any other person or entity requested, which usually is a party that wishes to be kept aware of case progress. Each user is assigned a user name and password. The users are allowed to file documents, and others who pay a fee may have access, but not the ability to file. Each day the court's staff or each attorney's office pulls up the notification page to check for new filings, and whether some action of the court or response from the attorney is required. The public access terminal located in the District Clerk's office allows the general public access to all e-file cases. Non-subscribers can file at the public access terminal with a floppy disc, or they pay a small per-page fee to the clerk's office to scan in the documents. CourtLink established a backup data storage hard drive with the District Clerk. In the event of an unforeseen calamity occurring to CourtLink or the Internet, the clerk's office would be able to download every document ever filed in any case.

Resistance to change is expected, but e-filing is not a change, it is a revolution. Law firms that handle large data-driven litigation welcome any change that cuts cost and reduces lawyer workload. Senior partners are generally from a less-technical era and are typically regimented in the traditional manner in which cases are handled, but hey, money is money. E-filing eliminates the cost of postage, hand deliveries, certified mail, and personal filings. For a few cents, filings are made efficiently, effectively and swiftly.



## G. Implementation

In 1997 the 9th District Court was facing mass tort and complex tort litigation that was literally overwhelming the clerk, the court's staff and the judge with massive paper filings. By implementing e-filing, the court eliminated the problem almost immediately.

The Texas Supreme Court mandates that courts implement rules for the filing and assigning of cases. Within that structure, the local rules govern each jurisdiction. The Judges of Montgomery County, where the 9th District court is located, amended the local rules to permit mandatory e-filing. At first, the 9th Court mandated e-filing on a case-by-case basis. The Court was under the impression that only complex tort cases were appropriate for e-filing. Gradually, the Court became aware that even the smaller less-complicated cases were perfectly suited for e-filing. Amazingly, there were few complaints. Usually, the problems experienced were with outdated hardware or the initial acceptance by lawyers and their staff of a new way of thinking. The lawyers loved it because they had no choice. When given the option to not go on the system, their immediate reaction was negative. Change is difficult for most attorneys. Even when their own staff urged the lawyers for change, the initial reaction was negative.

Fifteen years ago, the Texas Supreme Court, in order to reduce the storage problems being endured by clerk' offices all over the State, mandated that all paper filings would only be accepted on letter size paper. The reaction of the Texas Bar was outright outrage. "How dare they change the time-honored tradition of legal size paper?" They dared because they were the Supreme Court of Texas and what they said was the final word. The hue and cry died down about as quickly as it arose. In a short time, no one even remembered why we filed legal size paper in the first place. The same applies with e-filing. Given a choice, the lawyers will always choose the path that they are accustomed. Why change? Therefore, the solution of implementation is the judge or administrator in charge making a determination that change is not only necessary but mandatory. The role of the administrator or technical advisor to the courts is to devise the appropriate e-filing system to implement and then rely upon the inherent power of the courts to force the issue.

## Conclusion

The individual held to be ultimately responsible for whether justice is denied is the judge. It is the judge's docket and the judge's reputation that is on the line. The judge has the ability to urge and encourage staff members and lawyers to be patient and open-minded. The judge has to be the one to herd, cajole or even threaten the ensemble of participants into the 21st century. Too often, a judge presides over his court in the role of the village resident wise man. He is distant and aloof from those who come before him and does not concern himself with the mundane problems of those who serve him. That judge will eventually be found at his desk with an ink pen in one hand and his body crushed under the weight of files that have been taken under submission. He is in reality not the village wise man but the village idiot. Justice in civil cases must be the opportunity for litigants to have their day in court. Backlog of cases caused by understaffing, poor training and archaic filing systems do not afford justice. Justice delayed is justice denied.

The effect of e-filing is a return of the power structure that never should have been abandoned. Since the court has the responsibility to see that justice prevails, the court should preside not only over the trial of the case but the administration of the case as well. The judiciary has allowed their power and thus the respect of the Bar and the litigants to ebb away like a sand castle being washed away by the rising tide. E-filing allows the judge to return to the helm and direct that the Constitution be followed and the American public be assured that our courts achieve the goal that is engrained in our conscience and expressed, in the conclusion of the American Pledge of Allegiance, "**justice for all.**"

---

**EXHIBIT 7**



money for paper, document reproduction, envelopes, certified and/or regular postage, and perhaps labels. Or, had she chosen to file and serve her documents through messenger service, such filing and service would necessitate costs for paper, document reproduction, envelopes, labels, and delivery fees. Here, LexisNexis is simply the method by which filings are transmitted to the district clerk, and the increased use of e-filing by state and federal courts unquestionably benefits the public by reducing and conserving the amount of paper filings generated and circulated, allowing for increased access to information, and providing rapid, often 24-hour access to documents and filings. *See, e.g., Exhibit 6, § F.*<sup>5</sup>

29. McPeters's allegations here are at best baseless, and at worst frivolous, wasteful, and harassing. Because McPeters had options other than e-filing available to her, yet failed to make use of them, there is no plausible set of facts which would entitle her to relief. *See, e.g., Twombly*, 550 U.S. at 555, 127 S.Ct. 1955, 167 L.Ed.2d 929. McPeters's entire Complaint therefore runs afoul of the requirements of Rules 8(a) and 12(b)(6) of the Federal Rules of Civil Procedure, and warrants dismissal in its entirety. *See* FED. R. CIV. P. 8a, 12(b)(6); *Iqbal*, 129 S.Ct. at 1949 (recognizing that Rule 8 "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation").

**B. Judge Edwards Is Entitled To Absolute Immunity From McPeters's Claims.**

**(i) The Law.**

30. State and federal judges are entitled to absolute immunity from damages for judicial acts that they perform in judicial proceedings before them. *See Stump v. Sparkman*, 435

---

<sup>5</sup> "The lawyer does not incur postage costs, delivery costs or personal filings by staff. All filings are immediately noticed to the clerk's office, the judge's office, the opposing parties, and any other person or entity requested, which usually is a party that wishes to be kept aware of the case progress. . . .E-filing eliminates the cost of postage, hand deliveries, certified mail, and personal filings. For a few cents, filings are made efficiently, effectively and swiftly."