

**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,)

V.)

CIVIL ACTION NO. 4:10cv1103

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

DEFENDANT REED ELSEVIER, INC.’S RESPONSE TO PLAINTIFF’S POST-SUBMISSION LETTER BRIEF

Defendant LexisNexis,¹ a division of Reed Elsevier Inc., (“LexisNexis”) respectfully submits this Response to Plaintiff’s Post-Submission Letter Brief.

I. United States v. Kras is dispositive of this case.

At the December 9, 2010 hearing, this Court raised the valid question of whether *United States v. Kras*, 409 U.S. 434 (1973), is dispositive of Plaintiff’s due process and equal protection claims. *Kras* answers the important question of whether charging fees for court services interferes with the right of access to courts. *Id.* In *Kras*, an indigent petitioner in bankruptcy challenged court filing fees associated with voluntary bankruptcy. *Id.* Applying rational basis scrutiny, the *Kras* court held the filing fee requirement was constitutional. *Id.* In comparing the facts in *Kras* to those of *Boddie v. Connecticut*, 401 U.S. 371 (1971), a case where filing fees were held unconstitutional as applied to indigent petitioners seeking divorce, the court

¹ Improperly pled as Reed Elsevier Inc., d/b/a LexisNexis by Plaintiff.

distinguished the facts in *Boddie* which “touched directly...on the marital relationship and on the associational interests that surround the establishment and dissolution of that relationship.”

Kras, 409 U.S. at 444. According to the *Kras* court, “*Boddie* was based on the notion that a State cannot deny access, simply because of one’s poverty, to a ‘judicial proceeding [that is] the only effective means of resolving the dispute at hand.’” *Kras*, 409 U.S. at 433. Thus in *Boddie*, the “utter exclusiveness of court access and court remedy...was a potent factor” in the court’s decision. *Kras*, 409 U.S. at 445. In other words, indigent petitioners seeking a divorce had no alternative means for obtaining a divorce, which rendered filing fees barriers to dissolving a marriage, an institution which is decidedly one of choice under the U.S. Constitution. *See Loving v. Virginia*, 388 U.S. 1 (1967).

Although the facts in *Kras* are somewhat distinguishable from the case at hand, the holding applies equally here. The *Kras* court’s reason for not following *Boddie* was that debtors could pursue alternatives other than bankruptcy court to resolve their debts. *Kras*, 409 U.S. at 445. Similarly, civil litigants have choices. Civil litigants can resolve their disputes without the assistance of the judiciary. More importantly, civil litigants can avoid e-filing fees by using the Public Access Terminals or requesting leave of court to submit paper filings. The bankruptcy petitioner in *Kras* did not have any free, alternative filing arrangements, yet was nevertheless found to have suffered no constitutional violation. *Kras*, 409 U.S. at 434. Finally, the *Kras* court’s stated rational basis for bankruptcy filing fees is equally applicable here – such fees “make the system self-sustaining and paid for by those who use it rather than by tax revenues drawn from the public at large.” *Kras*, 409 U.S. at 448. For those litigants who choose e-filing, they pay to support a system of convenience and efficiency, shifting the burden from the public at large. Those litigants who do not choose e-filing have alternative means for filing and, therefore, are not denied access to courts.

II. Conclusion.

Plaintiff has failed to identify any contrary authority which would support her allegations that litigants have a fundamental right to file civil lawsuits and that e-filing fees violate such a right. Moreover, Plaintiff concedes that the facts in *Boddie* are distinguishable from the instant case and has failed to identify any other authority distinguishing *Kras*.² As a result, LexisNexis requests this Court grant its Motion to Dismiss for failure to state a claim for which relief can be granted and/or for lack of federal subject matter jurisdiction.

Respectfully submitted,

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² Plaintiff states that “[n]either *Kras* nor *Boddie* involved recurring, mandatory, unregulated charges over and above the original filing fee, apparently duplicate charges for the same services, charges by a third party (non-governmental entity), or recurrent charges not levied against all litigants in the same venue.” This statement concedes *Boddie*, is distinguishable and fails to identify any constitutionally protected class or interest.

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of December, 2010, I electronically filed the foregoing **Defendant Reed Elsevier Inc.'s Response to Plaintiff's Post-Submission Letter Brief** with the Clerk of Court using the CM/ECF system, which automatically sends an e-mail notification of such filing to the following attorneys of record:

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