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September 1, 2004

VIA FEDERAL EXPRESS

Janice Atkinson
Sonoma County Registrar of Voters
435 Fiscal Drive
Santa Rosa, Ca 95403

Re: Gay Rainsbarger v. Sonoma County Board of Supervisors
Sonoma County Superior Court Case No. 235357

Dear Ms. Atkinson:

Enclosed please find the following file endorsed documents with regard to the above-referenced matter.

- 1) Order on Plaintiff's Application for Order Shortening Time;
- 2) Ex Parte Application for Order Shortening Time to Hear Plaintiff's Complaint for Declaratory and Injunctive Relief and Points and Authorities in Support of the Application;
- 3) Declaration of Megan H. Acevedo in Support of Ex Parte Application for Order Shortening Time to Hear Plaintiff's Complaint for Declaratory and Injunctive Relief;
- 4) Order on Plaintiff's Application for Order Nunc Pro Tunc;
- 5) Ex Parte Application for Order Nunc Pro Tunc Amending Complaint for Declaratory Relief;
- 6) Declaration of Megan h. Acevedo in Support of Ex Parte Application for Order Nunc Pro Tunc Amending Complaint for Declaratory Relief;

Very truly yours,

Keith Kiley

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5 Attorneys for Plaintiff
6

Exempt from Filing Fees per Gov. Code § 6103

**ENDORSED
FILED**

AUG 31 2004

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

7 IN THE SUPERIOR COURT OF CALIFORNIA

8 COUNTY OF SONOMA

9 GAY RAINSBARGER, Sonoma City Clerk and)
Elections Official)

10)
11 Plaintiff,)

12 v.)

13 SONOMA COUNTY BOARD OF)
SUPERVISORS, SONOMA COUNTY)
REGISTRAR OF VOTERS,)

14)
15 Defendants.)

16 THOMAS E. ANDERSON, STANLEY)
COHEN, CHRIS ELMS, THOMAS)
17 HAEUSER, JOANNE SANDERS, PATRICK)
WOFFORD,)

18)
19 Real Parties in Interest)

Case No. 235357

**[PROPOSED] ORDER ON
PLAINTIFF'S APPLICATION FOR
ORDER SHORTENING TIME**

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MHA

McDonough Holland & Allen PC
Attorneys at Law

1 Upon consideration of the arguments related to good cause to shorten time,

2 IT IS ORDERED that the ex parte application of Plaintiff Gay Rainsbarger Sonoma City
3 Clerk and Elections Official, for an Order Shortening Notice Time to hear the Complaint for
4 Declaratory and Injunctive Relief in the above-captioned matter is granted. Defendants' Responsive
5 Pleadings must be filed and served on September 3, 2004. In the interest of time, plaintiff will not
6 file a reply brief in this matter. The matter will be heard in Department 21 of this Court on

7 Wed 9-8-2004 8:30 am

8 Dated: ~~AUG 31 2004~~

ROBERT S. BOYD

9
10 _____
HONORABLE ROBERT S. BOYD

11 JUDGE OF THE SUPERIOR COURT
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28

1 CASE TITLE: *Rainsbarger v. Sonoma County Board of Supervisors, et al.*
2 COURT/CASE NO: Sonoma County Superior Court Case No.: 235357

3 **PROOF OF SERVICE**

4 I am employed in the County of Alameda; my business address is 1901 Harrison Street,
5 9th Floor, Oakland, California 94612. I am over the age of eighteen years and not a party to the
6 foregoing action.

7 I am readily familiar with the business practice at my place of business for collection and
8 processing of correspondence for mailing with the United States Postal Service. Correspondence so
9 collected and processed is deposited with the United States Postal Service that same day in the
10 ordinary course of business.

11 On October 15, 2004, I served the within: **Request for Dismissal**

12	<input checked="" type="checkbox"/> by mail on the following party(ies) in said action, in accordance with Code of Civil Procedure § 1013a(3), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At McDonough Holland & Allen PC, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of Oakland, California.
13	<input type="checkbox"/> by personally delivering a true copy thereof, in accordance with Code of Civil Procedure § 1011, to the person(s) and at the address(es) set forth below.
14	<input type="checkbox"/> by overnight delivery on the following party(ies) in said action, in accordance with Code of Civil Procedure § 1013(c), by placing a true copy thereof enclosed in a sealed envelope, with delivery fees paid or provided for, and delivering that envelope to an overnight express service carrier as defined in Code of Civil Procedure § 1013(c)..
15	<input type="checkbox"/> by facsimile transmission , in accordance with Code of Civil Procedure § 1013(e), to the following party(ies) at the facsimile number(s) indicated:

16
17
18
19 Attn: Lanie Gerber, Clerk
20 Sonoma County Board of Supervisors
21 575 Administration Drive, Rm 100-A
Santa Rosa, CA 95403
707.565.3778

Attn: Janice Atkinson
Sonoma County Registrar of Voters
435 Fiscal Drive
Santa Rosa, CA 95403
707.

22 I declare under penalty of perjury under the laws of the State of California that the foregoing
23 is true and correct and that this document was executed on October 15, 2004.

24 
25 _____
26 Keith Kiley
27
28

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5 Attorneys for Plaintiff
6
7

Exempt from Filing Fees per Gov. Code § 6103

ENDORSED
FILED

AUG 31 2004

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

8 IN THE SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SONOMA

10 GAY RAINSBARGER, Sonoma City Clerk and)
Elections Official)

11 Plaintiff,)

12 v.)

13 SONOMA COUNTY BOARD OF)
14 SUPERVISORS, SONOMA COUNTY)
REGISTRAR OF VOTERS,)

15 Defendants.)
16

17 THOMAS E. ANDERSON, STANLEY)
COHEN, CHRIS ELMS, THOMAS)
18 HAEUSER, JOANNE SANDERS, PATRICK)
WOFFORD,)

19 Real Parties in Interest)
20

Case No. 235357

**EX PARTE APPLICATION FOR
ORDER SHORTENING TIME TO
HEAR PLAINTIFF'S COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF; POINTS &
AUTHORITIES IN SUPPORT OF THE
APPLICATION**

21 Code of Civil Procedure section 1005 permits Courts to prescribe a shorter time period for
22 any motion requiring written notice. Under Rule of Court 317(b) Courts are specifically allowed to
23 shorten the amount of time required for filing and serving a motion whenever good cause exists.
24 Good cause for granting this application in favor of plaintiff, Gay Rainsbarger, Sonoma City Clerk
25 and Elections Official, exists for reasons discussed below. (*Wilson v. Handley*, 97 Cal.App.4th
26 1301, 1306 (3d Dist. 2003) (Good cause is given its ordinary meaning).)
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE**
2 **APPLICATION FOR ORDER SHORTENING TIME**

3 The City of Sonoma ("City") Elections Official, Gay Rainsberger, is seeking a
4 decision from this court regarding the meaning of the term "Occupation" as it is used in section
5 13307 of the California Elections Code. The Code itself does not define the meaning, nor are there
6 cases interpreting its definition.

7 The Elections Code provides for specific procedures for filing Nomination Papers for city
8 elections. Section 13307 of the Elections Code allows each candidate for elective city office, to
9 prepare a Candidate Statement on a form provided by the city elections official. "The statement may
10 include the name, age and occupation of the candidate and a brief description, of no more than 200
11 words, of the candidate's education and qualifications expressed by the candidate himself or herself."
12 (Elect. Code §13307(a)(1).)

13 Once all Nomination Papers are filed and the filing period for candidates closes, the code
14 provides for a ten-calendar-day review period during which candidates and the public may review
15 Candidate Statements. "During the 10-calendar-day public examination period provided by this
16 section, any voter of the jurisdiction in which the election is being held, or the elections official,
17 himself or herself, may seek a writ of mandate or an injunction requiring any or all of the material in
18 the candidates statements to be amended or deleted." (Elect. Code §13313. (b)(1).)

19 After the ten-calendar-day review period, the Candidate Statement becomes part of the
20 printed voter information pamphlet. Elections Code section 13307 specifies: "The elections official
21 shall send to each voter, together with the sample ballot, a voter's pamphlet which contains the
22 written statements of each candidate that is prepared pursuant to this section." (Elect. Code
23 §13307(3)(b).)

24 On June 16, 2004, the City Council for the City of Sonoma adopted Resolution No. 38-2004
25 calling a General Municipal Election to be held November 2, 2004, for the purpose of filling two full
26 four-year terms on the City Council. At that time, the Council also adopted Resolution No. 39-2004
27 requesting the County to Consolidate the Election. Thus, defendant County Registrar of Voters will
28 conduct the City's election on November 2, 2004, along with the general election. Because the

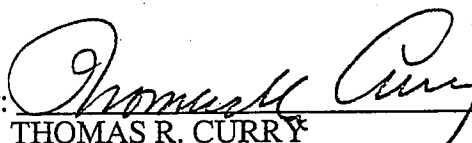
1 election is quickly approaching, the County Registrar must print the voter information pamphlet and
2 distribute it to all voters in the coming weeks. The decision in this case will determine the type of
3 information that is appropriate within the "Occupation" section of the Candidate Statements printed
4 in the voter pamphlet. Therefore, it is imperative that the court resolve the issue before printing
5 begins.

6 Furthermore, if the court postpones its review of the current complaint and allows the voter
7 information pamphlets to be printed with the current occupation information included, Plaintiff and
8 Real Parties in Interest will suffer irreparable harm in that the voter pamphlet will contain
9 inconsistent information about the candidates.

10 Counsel for Defendants, County Counsel, Kathy Larocque, is amenable to a shortened
11 pleading schedule to prevent the possibility of delay. During a telephone conference with City
12 Attorney Thomas R. Curry and Megan H. Acevedo of August 27, 2004, Ms. Larocque suggested that
13 she would be willing and able to file her responsive pleading by September 3, 2004. (Megan H.
14 Acevedo Declaration at ¶ 4.) Plaintiff requests a hearing on the matter as soon after that date as
15 possible. To prevent any delay in the printing of the voter information pamphlets and to ensure that
16 relief is granted before irreparable harm is done to candidates, Plaintiff respectfully requests that this
17 court grant an Order Shortening Time to hear the present Complaint.

18
19 DATED: August __, 2004

20 McDONOUGH HOLLAND & ALLEN PC
21 Attorneys at Law

22
23 By: 
THOMAS R. CURRY

24 Attorneys for Petitioner & Plaintiff
25
26
27
28

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6 Attorneys for Plaintiff
7

Exempt from Filing Fees per Gov. Code § 6103

**ENDORSED
FILED**

AUG 31 2004

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

8 IN THE SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SONOMA

10 GAY RAINSBARGER, Sonoma City Clerk and)
Elections Official)

11 Plaintiff,)

12 v.)

13 SONOMA COUNTY BOARD OF)
14 SUPERVISORS, SONOMA COUNTY)
REGISTRAR OF VOTERS,)

15 Defendants.)
16

17 THOMAS E. ANDERSON, STANLEY)
COHEN, CHRIS ELMS, THOMAS)
18 HAEUSER, JOANNE SANDERS, PATRICK)
WOFFORD,)

19 Real Parties in Interest)
20

Case No. 235357

**DECLARATION OF MEGAN H.
ACEVEDO IN SUPPORT OF EX
PARTE APPLICATION FOR ORDER
SHORTENING TIME TO HEAR
PLAINTIFF'S COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

21
22 I, MEGAN H. ACEVEDO, do declare and say that the matters set forth in this application
23 and declaration are stated on the basis of my own personal knowledge and experience, and if called
24 as a witness in this action, I could and would testify competently to such matters as follows:

25 1. I am an attorney at law licensed to practice in this state and am an attorney for
26 Plaintiff, Gay Rainsbarger ("Plaintiff"), Sonoma City Clerk and Elections Official, in this action.

27 2. On August 23, 2004, Plaintiff filed a Complaint for Declaratory and Injunctive Relief;
28 Verified Petition for Writ of Mandate. As described in greater detail in Plaintiff's concurrently filed

MHA

McDonough Holland & Allen PC
Attorneys at Law

1 Ex Parte Application For An Order Nunc Pro Tunc, I was notified on August 24, 2004, that the
2 Clerk of Court would not permit a complaint for declaratory relief to be combined with a petition for
3 writ of mandate. Therefore, on August 24, 2004, Plaintiff filed a Complaint for Declaratory and
4 Injunctive Relief in the above entitled case. This case is brought to request the court's decision in
5 defining the meaning of "Occupation" as it is used in the Elections Code section allowing candidates
6 for City elections to file Candidate Statements (Elections Code §13307.)

7 3. The parties are interested in a quick resolution to this issue. The Candidate Statement
8 for each City Council candidate will be incorporated into the voter information pamphlet to be sent
9 to all City voters. A dispute about the contents of the Statement could result in delayed printing of
10 the voter information pamphlet. It is necessary that the Complaint for Declaratory and Injunctive
11 Relief be heard on shortened time because the parties do not want to delay printing of the voter
12 information pamphlet.

13 4. I have given more than 24 hours notification to Kathy Larocque, counsel for
14 respondents Sonoma County Board of Supervisors and Sonoma County Registrar of Voters
15 ("Respondents"), of this ex parte application. Counsel for Respondents, is located at 575
16 Administration Drive, Room 100-A, Santa Rosa, California. On August 27, 2004 at approximately
17 10:00 a.m. County Counsel Kathy Larocque telephoned our office and spoke with me and City
18 Attorney Thomas Curry. During the conference call with Ms. Larocque on speaker phone, Mr.
19 Curry personally notified her of the date, time, and place of this ex parte application. During that
20 conversation, Ms. Larocque indicated that Defendants would be willing to file their responsive
21 pleadings by September 3, 2004.

22 5. I have given more than 24 hours notification to Real Parties In Interest, Thomas E.
23 Anderson, Stanley Cohen, Chris Elms, Thomas Haeuser, Joanne Sanders, and Patrick Wofford. At
24 approximately 2:40 p.m. on August 27, 2004, I telephoned Thomas E. Anderson at his home
25 telephone number and left a message on his answering machine notifying him of the date, time, and
26 place of this ex parte application. At approximately 2:44 p.m. on August 27, 2004, I telephoned
27 Stanley Cohen at his home telephone number and personally notified him of the date, time, and place
28 of this ex parte application. At approximately 2:50 p.m. on August 27, 2004, I telephoned Chris

1 Elms at his home telephone number and personally notified him of the date, time, and place of this
2 ex parte application. At approximately 3:10 p.m. I telephoned Thomas Haeuser at his business
3 telephone and left a message with his secretary to notify him of the date, time, and place of this ex
4 parte application. At approximately 3:15 p.m. on August 27, 2004, I telephoned Joanne Sanders at
5 her business telephone and left a message with her secretary to notify her of the date, time, and place
6 of this ex parte application. At approximately 3:18 p.m. on August 27, 2004, I telephoned Patrick
7 Wofford at his home telephone and left a message on his answering machine notifying him of the
8 date, time, and place of this ex parte application.

9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is to my knowledge true and correct. Executed this 30th day of August, 2004, at Oakland,
11 California.

12
13
14 By: Megan Acevedo
MEGAN H. ACEVEDO

1 McDONOUGH HOLLAND & ALLEN PC
Attorneys at Law
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MEGAN H. ACEVEDO (# 226604)
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Fax: 510.839.9104
5 Attorneys for Plaintiff

Exempt from Filing Fees per Gov. Code § 6103

FILED

AUG 31 2004

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

7 IN THE SUPERIOR COURT OF CALIFORNIA
8 COUNTY OF SONOMA

9 GAY RAINSBARGER, Sonoma City Clerk and)
Elections Official)

Case No. 235357

11 Plaintiff,

**~~PROPOSED~~ ORDER ON
PLAINTIFF'S APPLICATION FOR
ORDER NUNC PRO TUNC**

12 v.

13 SONOMA COUNTY BOARD OF)
SUPERVISORS, SONOMA COUNTY)
14 REGISTRAR OF VOTERS,)

15 Defendants.

16 THOMAS E. ANDERSON, STANLEY)
COHEN, CHRIS ELMS, THOMAS)
17 HAEUSER, JOANNE SANDERS, PATRICK)
WOFFORD,)

19 Real Parties in Interest)

20 Upon consideration of the arguments related to good cause to shorten time,

21 **IT IS ORDERED** that the ex parte application of Plaintiff Gay Rainsbarger Sonoma City
22 Clerk and Elections Official, for an Order Nunc Pro Tunc to amend the Complaint for Declaratory
23 and Injunctive Relief as having been filed on August 23, 2004, it granted.

24 Dated: AUG 31 2004

ROBERT S. BOYD

26 HONORABLE ROBERT S. BOYD

27 Judge of the Superior Court
28

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4 Phone: 510.273.8780
Fax: 510.839.9104

5 Attorneys for Plaintiff
6
7

Exempt from Filing Fees per Gov. Code § 6103

**ENDORSED
FILED**

AUG 31 2004

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

8 IN THE SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SONOMA

10 GAY RAINSBARGER, Sonoma City Clerk and)
Elections Official)

11)
12 Plaintiff,)

13 v.)

14 SONOMA COUNTY BOARD OF)
SUPERVISORS, SONOMA COUNTY)
REGISTRAR OF VOTERS,)

15)
16 Defendants.)

17 THOMAS E. ANDERSON, STANLEY)
COHEN, CHRIS ELMS, THOMAS)
18 HAEUSER, JOANNE SANDERS, PATRICK)
WOFFORD,)

19)
20 Real Parties in Interest)
21

Case No. 235357

**EX PARTE APPLICATION FOR
ORDER NUNC PRO TUNC
AMENDING COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

22 Plaintiff, City of Sonoma Elections Official, Gay Rainsbarger ("Plaintiff"), is seeking a
23 decision from this Court regarding the meaning of the term "Occupation" as it is used section 13307
24 of the California Elections Code. Toward this end, Plaintiff submitted to this Court a Complaint for
25 Declaratory and Injunctive Relief; Verified Petition for Writ of Mandate, on August 23, 2004. On
26 August 24, 2004, the Clerk of Court, Mala Fernandez, notified Plaintiff's attorney, Megan H.
27 Acevedo that a complaint and petition for writ could not be filed as one document. Therefore,
28 Plaintiff's counsel filed a Complaint for Declaratory and Injunctive Relief on August 24, 2004.

MHA

McDonough Holland & Allen PC
Attorneys at Law

1 Plaintiff hereby requests that the latter Complaint be amended by an order nunc pro tunc to set its
2 filing date back to August 23, 2004.

3 **Points and Authorities In Support of Application for Order Nunc Pro Tunc**

4 Plaintiff timely filed a Complaint for Declaratory and Injunctive Relief; Verified Petition for
5 Writ of Mandate ("Complaint/Petition") on August 23, 2004. (Declaration of Megan H. Acevedo
6 ("Acevedo Dec.") at ¶2, *see also* Exhibit A to Acevedo Dec.) The following day, the Clerk of Court
7 informed Mrs. Acevedo that the Complaint/Petition was unacceptable because complaints can not be
8 combined with writ petitions. (Acevedo Dec. at ¶3.) Plaintiff's counsel asked the Clerk for the
9 reference to a rule of court or local rule prohibiting such a filing and Ms. Fernandez said that she
10 could not take the time to identify the applicable statute, but that the Court's policy against the
11 combined complaint/writ was firm. (Acevedo Dec. at ¶4.) Mrs. Acevedo told the Clerk that she had
12 been involved in a case filed in Sonoma Superior Court in which the complaint contained a petition
13 for writ of mandate. Mrs. Fernandez said that the case must have been accepted erroneously, as no
14 such filings are permitted. (Acevedo Dec. at ¶4.) Mrs. Acevedo went on to ask whether the Clerk
15 would cross out the third cause of action pursuant to a request by plaintiff and Ms. Fernandez said
16 that she would not. Rather, Ms. Fernandez explained that the only way to cure the alleged error was
17 to file a new complaint and/or writ. (Acevedo Dec. at ¶5.) Mrs. Acevedo explained that refileing
18 would cause the document to be filed on August 24, 2004, one day past the deadline for filing an
19 injunction under the relevant Elections Code section. (Acevedo Dec. at ¶5.) The Clerk responded
20 that the only way to avoid a late filing would be to submit an ex parte application for a nunc pro tunc
21 order with the judge. (Acevedo Dec. at ¶5.)

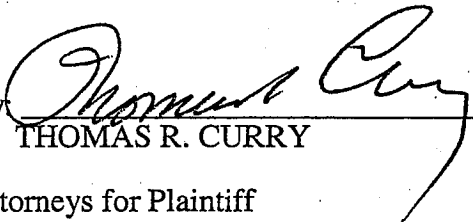
22 A nunc pro tunc order is one entered as of a time prior to the actual entry, so that it is treated
23 as effective on the earlier date. It allows for retroactive entry and is an exercise of the Court's
24 inherent power, "the object being to do justice to a litigant whose rights are threatened by a delay
25 that is not his fault." (Witkin, 7 Judgment §62.)

26 In the present case, Plaintiff met the deadline for filing its Complaint when it filed the
27 Complaint/Petition on August 23, 2004. Plaintiff's counsel was not informed until the following day
28 that complaints cannot be combined with petitions for writ of mandate. Although Plaintiff's counsel

1 is unaware of any rule or reason for keeping writ petitions separate from complaints for declaratory
2 relief, counsel immediately refiled its revised complaint, dropping the petition for writ from its listed
3 causes of action. The Complaint for Declaratory and Injunctive Relief was filed on August 24,
4 2004. The delay was not the fault of Plaintiff; thus, in the interest of justice, Plaintiff respectfully
5 requests that the Court order the Complaint amended nunc pro tunc to set its filing date for August
6 23, 2004.

7
8 DATED: August __, 2004

9
10 McDONOUGH HOLLAND & ALLEN PC
Attorneys at Law

11
12 By 
THOMAS R. CURRY
13 Attorneys for Plaintiff