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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

URSULA WHITE, BRUCE N. REITER, and MARGARET  
RETZ,

Plaintiffs,

v.

PUBLIC EMPLOYEES RETIREMENT BOARD,

Defendant,

and

STATE OF OREGON, LANE COUNTY, CITY OF  
EUGENE, MULTNOMAH COUNTY, CITY OF  
PORTLAND, CITY OF ROSEBURG, CITY OF  
HUNTINGTON, CANBY UTILITY BOARD, and ROGUE  
RIVER VALLEY IRRIGATION DISTRICT,

Intervenors.

Case No.: 0404-04118

**LOCAL GOVERNMENT  
INTERVENORS'  
RESPONSE IN  
OPPOSITION TO  
PLAINTIFFS' MOTION  
FOR ORDER STRIKING  
DECLARATIONS OF  
SHARON RUDNICK**

URSULA WHITE, BRUCE N. REITER, and MARGARET  
RETZ,

Petitioners,

v.

PUBLIC EMPLOYEES RETIREMENT BOARD,

Respondent,

and

STATE OF OREGON, LANE COUNTY, CITY OF  
EUGENE, MULTNOMAH COUNTY, CITY OF  
PORTLAND, CITY OF ROSEBURG, CITY OF  
HUNTINGTON, CANBY UTILITY BOARD, and ROGUE  
RIVER VALLEY IRRIGATION DISTRICT,

Intervenors.

Case No.: 0411-11848



1 explanation or authority that Paragraph 3 is a statement of opinion. For these reasons,  
2 petitioners' motion to strike Paragraph 3 of the Declaration should be denied.

3 **II. Paragraph 10 (Declaration) and Paragraphs 2 and 3 (Supplemental Declaration)**

4 Petitioners also argue that Paragraph 10 of the Declaration, and Paragraphs 2 and  
5 3 of the Supplemental Declaration, should be struck. In these paragraphs, Ms. Rudnick  
6 sets forth the amount of legal fees and costs incurred by the *City of Eugene* petitioners  
7 through the date of the ORCP 67 B Judgment. Petitioners argue that because billing  
8 records were not produced in discovery, Ms. Rudnick may not *testify* as to the amount of  
9 fees. Petitioners offer no legal authority in support of this argument.

10 Ms. Rudnick is not offering documents that Local Government Intervenors failed  
11 to produce in discovery, whether the billing records mentioned by petitioners or  
12 otherwise. Rather, Ms. Rudnick is testifying based on personal knowledge as to the  
13 amount of fees incurred. Petitioners' argument is a non-sequitur with no explanation for  
14 why failure to produce documents should lead the court to strike testimony which does  
15 not even specifically reference those documents.

16 ORCP 47 D requires that supporting declarations "shall be made on personal  
17 knowledge, shall set forth such facts as would be admissible in evidence," and the  
18 declarant must be competent to testify to the matters stated therein. Ms. Rudnick has  
19 satisfied these requirements, as demonstrated by her declarations. Petitioners do not  
20 argue that Ms. Rudnick lacks personal knowledge of the subject matter or that the facts  
21 stated would be inadmissible or that Ms. Rudnick is not competent to testify.

22 Instead, petitioners attempt to use a motion to strike as a vehicle to raise an  
23 objection to Local Government Intervenors' refusal to produce irrelevant detailed billing  
24 records in response to an informal request.

1           Petitioners did not seek time and billing records in a Request for Production of  
2 Documents pursuant to ORCP 36. Declaration of Sharon Rudnick in Support of Local  
3 Government Intervenors' Response to "Plaintiffs' Motion for Order Striking Declarations  
4 of Sharon Rudnick" ("Rudnick Decl.") at 4. Rather, petitioners sent an informal email  
5 request seeking all time and billing records related to the *City of Eugene* case. Rudnick  
6 Decl. at 2. Counsel for Local Government Intervenors responded that they believed the  
7 documents were beyond the scope of discovery as they were neither relevant to any claim  
8 or issue, nor reasonably calculated to lead to the discovery of admissible evidence. *Id.*  
9 Moreover, the time and billing records contained information protected by the attorney-  
10 client privilege. *Id.*

11           In an effort to avoid a discovery dispute (despite the lack of even a formal  
12 discovery request), Local Government Intervenors produced a summary of the billing  
13 information showing the fees billed and paid on the *City of Eugene* litigation by month.  
14 At the request of petitioners' counsel, counsel for Local Government Intervenors also  
15 confirmed that none of the fees shown included work done on the Reform Legislation.  
16 Rudnick Decl. at 3. Petitioners never responded with a formal request for production.  
17 Likewise, petitioners never brought a motion to compel production. Rudnick Decl. at 4.  
18 Local Government Intervenors believed the issue to be resolved. *Id.*

19           If petitioners believed they were entitled to detailed billing records, despite the  
20 summary provided, they had a number of alternatives including: (1) continue to confer  
21 with counsel for Local Government Intervenors and attempt to resolve the issue via  
22 discovery conference; (2) provide formal and specific discovery requests to address Local  
23 Government Intervenors' objections; or (3) file a motion to compel their production.

24           Petitioners chose not to pursue these or other avenues that may have resulted in  
25 the production of documents, but instead remained silent on the issue until raising the  
26

1 current objection. Petitioners should not be allowed to lie in the weeds and object to the  
2 admission of testimony (that does not specifically reference any particular documents)  
3 because petitioners failed to take even the minimal steps to procure in discovery,  
4 documents to which they believe themselves entitled.

5 Petitioners make no argument that Ms. Rudnick is incompetent to testify about her  
6 own office's legal fees. Petitioners offer no authority for the proposition that testimony  
7 which does not reference documents should nevertheless be struck because certain  
8 documents were not produced in discovery. This is especially significant when, as is the  
9 case here, petitioners did so little to obtain the documents at issue in the first place.

10 For these reasons petitioners' motions to strike should be denied.

11 **CONCLUSION**

12 For the foregoing reasons, Plaintiffs' Motion for Order Striking Declarations of  
13 Sharon Rudnick should be denied.

14 Dated this 21 day of July, 2008.

15 **HARRANG LONG GARY RUDNICK P.C.**

16 

17 William F. Gary, OSB #77032

18 Sharon A. Rudnick, OSB #83083

19 Joshua P. Stump, OSB #97407

20 Attorneys for Intervenors Lane County, City of  
21 Eugene, Multnomah County, City of Portland, City  
22 of Roseburg, City of Huntington, Canby Utility  
23 Board and Rogue River Valley Irrigation District

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**CERTIFICATE OF SERVICE**

I certify that on July 21, 2008, I served or caused to be served a true and complete copy of the foregoing **LOCAL GOVERNMENT INTERVENORS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR ORDER STRIKING DECLARATIONS OF SHARON RUDNICK** on the party or parties listed below as follows:

- Via First Class Mail, Postage Prepaid
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