

PLUNKETT & GIBSON, INC.

ATTORNEYS AT LAW
RENAISSANCE PLAZA, SUITE 1100
70 N.E. LOOP 410
SAN ANTONIO, TX 78216
TELEPHONE: (210) 734-7092
FACSIMILE: (210) 734-0379

E-Mail: hellerj@plunkett-gibson.com

JOHN A. HELLER
Board Certified, Labor & Employment
Texas Board of Legal Specialization

January 20, 2010

David P. Griffin
P.O. Box 1013
Johnson City, TX 78636

via email and CMRRR #7160 3901 9848 3249 1223

RE: Cause No. D-1-GN-09-002028; *David P. Griffin v. City of Austin, et. al.*; 126th
Judicial District; Travis County, Texas; Our File No. 3995-012

Dear Mr. Griffin:

In connection with the above-referenced matter, enclosed please find the following document filed with the court today:

- Defendants Garry Wilkison, Linda Litowsky, Cathy Beaudoin, Jackie Goodman, Celia Hughes, Emanuel Limuel, Jr., Oscar Palomo, Daniel Scardino, Deborah L. Hill, Helene Caudill and Public Access Community Television's Response to Plaintiff's Request for Findings of Fact and Conclusions of Law.

Thank you for your attention to this matter.

Sincerely,

PLUNKETT & GIBSON, INC.

By: 
John A. Heller

JAH/ps
enclosure
#365709

cc: Robin Sanders (*via email and regular mail*)
Clark Richards (*via email*)
Linda Litowsky (*via email*)

I.
History

On December 18, 2009, the Court signed and entered its Order Granting PACT Defendants' Motion for Summary Judgment. On January 4, 2010, Plaintiff filed his Notice of Appeal to the Third Circuit Court of Appeals with the Travis County District Clerk in this action. On January 18, 2010, Plaintiff filed his Request for Findings of Fact and Conclusions of Law.

II.
**Plaintiff's Request is Not Timely and the Court Lacks
Jurisdiction to Consider the Request**

Plaintiff's Request for Findings of Fact and Conclusions of Law was filed on the thirty-first day following the date the Order of Judgment was signed by the Court. Under the Rules of Procedure, this is not a timely filing. Plaintiff's Request for Findings of Fact and Conclusions of Law was filed two weeks after Plaintiff filed a Notice of Appeal. Plaintiff's Notice of Appeal further makes his Request untimely.

Plaintiff's untimely filing of his Request for Findings of Fact and Conclusions of Law removes jurisdiction from the Court. By failing to file Plaintiff's Request for Findings of Fact and Conclusions of Law within the time period set forth in the Rules of Procedure, the Court has lost jurisdiction to consider Plaintiff's Request. By filing Plaintiff's Request for Findings of Fact and Conclusions of Law subsequent to Plaintiff's Notice of Appeal, the Court has lost jurisdiction to consider Plaintiff's Request.

Since Plaintiff's Request was not timely filed and since the Court has lost jurisdiction to consider Plaintiff's Motion, the Court should enter its order denying Plaintiff's Request for being untimely and because the Court lacks jurisdiction to consider Plaintiff's Request.

III.
**Request for Findings of Fact and Conclusions of Law are
Improper in a Summary Judgment**

Plaintiff's Request for Findings of Fact and Conclusions of Law is improper as to Defendant PACT and the PACT Defendants because Defendant PACT and the PACT Defendants prevailed on summary judgment. By finding in favor of PACT and the PACT Defendants, the Court found that Plaintiff's action against PACT and the PACT Defendants presented no genuine issues of material fact. TEX.R.CIV.P. 166a. Further, the legal conclusions are already stated in the motion and response. *Id.* Accordingly, the case law is clear that findings of fact and conclusions of law have no place in a summary judgment proceeding. *IKB Indus. v. Pro-Line Corp.*, 938 S.W.2d 440, 441-42 (Tex. 1997). "The trial court should not make, and the appellate court cannot consider, findings of fact in connection with a summary judgment. Because a request for findings and conclusions following summary judgment can have no purpose, should not be filed, and, if filed, should be ignored by the trial court, such a request should not extend appellate deadlines." *IKB Indus. v. Pro-Line Corp.*, 938 S.W.2d 440, 441-42 (Tex. 1997).

The Court should deny Plaintiff's Request for Findings of Fact and Conclusions of Law.

IV.
**Should the Court Grant Plaintiff's Request, Defendants should be given the
Opportunity to Submit Proposed Findings of Fact and Conclusions of Law**

In the alternative and in the event that the Court determines that it has jurisdiction and that Plaintiff's Motion is proper and should be granted, Defendants should be provided an opportunity to submit proposed Findings of Fact and Conclusions of Law.

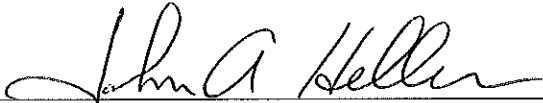
V.
CONCLUSION AND PRAYER

WHEREFORE, Defendants pray that all relief requested by Plaintiff be denied.

Alternatively, if the Court determines to grant Plaintiff's Request, Defendants should be provided an opportunity to submit proposed Findings of Fact and Conclusions of Law. Additionally, Defendants pray that they recover their costs and reasonable attorneys' fees and any additional and further relief to which they are entitled under law or in equity.

Respectfully submitted,

PLUNKETT & GIBSON, INC.

By: 

John A. Heller.

State Bar No. 09394600

Renaissance Plaza
70 N.E. Loop 410, Suite 1100
San Antonio, Texas 78216
Telephone No.: (210) 734-7092
Telecopier No.: (210) 734-0379

ATTORNEYS FOR DEFENDANTS, GARRY
WILKISON, LINDA LITOWSKY, CATHY
BEAUDOIN, JACKIE GOODMAN, CELIA
HUGHES, EMANUEL LIMUEL, JR., OSCAR
PALOMO, DANIEL SCARDINO, DEBORAH L.
HILL, HELENE CAUDILL and PUBLIC ACCESS
COMMUNITY TELEVISION ("PACT")

CERTIFICATE OF SERVICE

This is to certify that on the 20th day of January 2010, a copy of the foregoing document has been forwarded by certified mail, return receipt requested, to:

David P. Griffin
P.O. Box 1013
Johnson City, TX 78636
Plaintiff Pro Se

via email and CMRRR #7160 3901 9848 3249 1223

Robin Sanders

via regular mail and email

Assistant City Attorney
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767-1546
Attorney for City of Austin & Rondella Hawkins



John A. Heller

