

IN THE SUPERIOR COURT OF HALL COUNTY

FILED  
HALL CO. GA  
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STATE OF GEORGIA

CHARLES BAKER, CLERK  
SUPERIOR STATE COURT

IN RE: Application for Recall of )  
Craig Lutz, Hall County Commissioner )  
District 1, Filed August 18, 2011 )  
 )  
Petition Chairperson: Kevin Kanieski )

BY:           
CIVIL ACTION FILE NO. 2011-CV-2182A

**ORDER ON MOTION FOR ATTORNEY FEES**

On November 10, 2011, Hall County Commissioner Craig Lutz filed a Motion and Brief for Attorney Fees following the dismissal of the Application for Recall by Order filed November 2, 2011. Said Order is hereby incorporated by reference.

A hearing was scheduled for June 22, 2012; but continued at the request of a party until August 24, 2012. Mr. Kanieski appeared, as did Mr. Lutz and his counsel. After considering the evidence and arguments of the parties, the Court rules as follows:

**Findings of Fact**

As the Court noted in its November 2, 2011 order, the Application for Recall suffered from the following defects: (1) failure to identify with reasonable particularity any meeting or meetings that violated Georgia Open Meeting Laws; (2) failure to identify any actions by Commissioner Lutz that would constitute a violation of his oath of office; and (3) failure to identify actions or conduct by Commissioner Lutz that would constitute misconduct or malfeasance while in office.

At the October 7, 2011 hearing concerning the sufficiency of the application, Mr. Kanieski presented no evidence in support of the application, called no witnesses to testify, chose not to respond to allegations that the application was grossly inadequate, and chose not to speak in response to most opportunities he was offered to do so.

At the August 24, 2012 hearing concerning Commissioner Lutz's request for attorney fees, Commissioner Lutz's counsel noted that there were several individuals associated with Mr. Kanieski in the recall effort, some of whom did not live in Hall County. Evidence was provided of social media discussions by several of those individuals evincing a desire to make the "entire process expensive and painful...personally" for Commissioner Lutz. One of Mr. Kanieski's associates admitted to Commissioner Lutz that the recall effort was "harassment." Lutz' counsel theorized that the recall effort was initiated in bad faith for hurtful purposes, primarily to cause Commissioner Lutz extreme emotional pain. Attorney fees were sought under both O.C.G.A. §9-15-14 (a) and (b).

In response to the above, Mr. Kanieski replied only that he felt he was exercising his First Amendment right by filing the Application for Recall, and that he should not be required to pay attorney fees. He did not deny or contest the allegations of bad faith or harassment.

#### Conclusions of Law

"In any civil action in any court of record of this state, reasonable and necessary attorney's fees and expenses of litigation shall be awarded to any party against whom another party has asserted a claim, defense, or other position with respect to which there existed such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept the asserted claim, defense, or other position." O.C.G.A. §9-15-14(a).

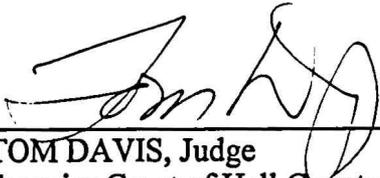
"The court may assess reasonable and necessary attorney's fees and expenses of litigation in any civil action in any court of record if . . . it finds that [a] . . . party brought . . . an action . . . that lacked substantial justification or that the action . . . was interposed for delay or harassment . . . . As used in this Code section, "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious." O.C.G.A. §9-15-14(b).

In his brief in support of attorney fees, Commissioner Lutz's counsel correctly predicts this

Court's concern about the chilling effect an award of fees might have on those legitimately exercising their right to seek recall of elected officials. Although Mr. Kanieski observes that he was exercising his First Amendment right, he did so in the context of a legal action within the meaning of O.C.G.A. §9-15-14 (a) and (b). In so doing, Mr. Kanieski obligated himself to exercise his free speech rights in a legally responsible fashion or subject himself to scrutiny under O.C.G.A. §9-15-14.

This Court does not have the means or the authority to decide whether or not the citizens of Hall County might have legitimate reasons and cause to attempt a recall of Commissioner Lutz. The Court must decide the question of attorney fees by considering the Application for Recall that was filed, and that application displayed such a complete absence of any justiciable issue of law or fact, that it could not be reasonably believed that a court would accept the application and send it forward. Therefore, reasonable attorney fees and expenses of litigation may be awarded under O.C.G.A. §9-15-14(a). The Court further finds that Mr. Stanley's testimony established the amount as well as the reasonableness of the fees and litigation expenses requested. In view of the foregoing, IT IS HEREBY ORDERED that Mr. Kevin Kanieski pay attorneys' fees in the amount of \$12,100.00 and litigation expenses of \$487.96. Mr. Kanieski shall tender the total amount of \$12,587.96 to E. Paul Stanley, P. O. Box 322, Gainesville, GA 30506 no later than 5:00 p.m. on December 7, 2012.

SO ORDERED this 7th day of September, 2012.

  
TOM DAVIS, Judge  
Superior Court of Hall County