

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

BEAUMONT BRANCH OF THE NAACP and
JESSICA DAYE,

Plaintiffs,

v.

JEFFERSON COUNTY, TEXAS and JEFFERSON
COUNTY COMMISSIONERS COURT, LAURIE
LEISTER, in her official capacity as the JEFFERSON
COUNTY CLERK, and MARY BETH BOWLING, in
her official capacity as the PRESIDING JUDGE OF
THE JOHN PAUL DAVIS COMMUNITY CENTER,

Defendants.

Civil Action No. 22 Civ. 488 (MJT)

**NOTICE OF DEFENDANTS' NON-COMPLIANCE WITH F.R.C.P. 26(F) AND
FAILURE TO SHOW COMPLIANCE WITH TEMPORARY RESTRAINING ORDER**

Plaintiffs file this notice to apprise the Court that the parties have been unable to meet and confer by the deadline set by Rules 16(b) and 26(f) because Defendants have failed to respond to requests to schedule the meet-and-confer, and that Defendants have failed to acknowledge Plaintiffs' repeated requests for proof that Defendants complied with the Court's Temporary Restraining Order (Dkt. 14). Instead, in their sole communication to Plaintiffs, Defendants asserted that the Court's TRO was "void *ab initio*," and then went silent once more—leaving a great many questions unanswered.

On November 7, 2022, Plaintiffs filed a complaint and motion for a temporary restraining order, emergency declaration, and injunctive relief. Dkt. 1, 3. The same day the Court held a hearing and Defendants made an appearance. Dkt. 13 (notice of appearance for an attorney on

behalf of three of the Defs.); Dkt. 15 (Hr’g Minutes); Dkt. 16 (Hr’g Witness List); *see also* Dkt. 32-1 (TRO Hr’g Tr.). Absent an order from the Court, Rules 16 and 26 collectively calculate the deadline for the parties to meet and confer about a case schedule and discovery plan from the date of those appearances. Here, that result is a Rule 26(f) conference deadline of today, December 16, 2022. *See* Fed. R. Civ. P. 16(b)(2), 26(f)(1).

At the conclusion of the November 7, 2022 hearing, the Court entered a TRO that expired on November 9, 2022. The TRO required that Defendant Leister “send notice of this order to all affected election judges, clerks, workers, volunteers, and watchers, and to fully implement this order, no later than **7:00 a.m. Central Time on November 8, 2022.**” Dkt. 14 at 3. Following the November 7, 2022 hearing, the Plaintiffs and Defendants have had the following communications:

- On November 8, 2022, Plaintiffs’ counsel emailed Defendants’ counsel and requested a copy of the Court-mandated notice to “affected election judges, clerks, workers, volunteers, and watchers.” November 8, 2022 Email from Homrig to Kennedy, attached hereto as Exhibit 1, at 1. Defendants’ counsel did not respond.
- Later on November 8, 2022, Plaintiffs’ counsel telephoned Defendants’ counsel and left multiple messages seeking a return call. Defendants’ counsel did not return those calls.
- That evening, Plaintiffs’ counsel emailed Defendants’ counsel again. *Id.* Defendants’ counsel did not respond.
- On December 5, 2022, Plaintiffs’ counsel sent Defendants’ counsel a letter by email and Federal Express, copying both defense attorneys registered for ECF service. The hard copy of the letter was delivered and signed for on December 6, 2022 at 11:38 am. Proof of Delivery of December 5, 2022 Letter from Homrig to Kennedy,

attached here to as Exhibit 2, at 1. Plaintiffs reiterated their requests for a copy of the Court-mandated notice and asked whether Defendants would agree to apply the rules set forth in the Court's TRO to all precincts in all future elections in Jefferson County. Dkt. 32-2.

- On December 7, 2022, Defendants' counsel replied by letter. Dkt. 32-3. Defendants neither acknowledged the request for, nor provided evidence of, compliance with the TRO. Instead, they asserted that the Court's order was "void *ab initio*." *Id.* at 2.
- On December 10, 2022, Plaintiffs' counsel wrote again to Defendants' counsel via email and Federal Express, again copying both attorneys who have appeared for Defendants. December 10, 2022 Letter from Homrig to Kennedy, attached here to as Exhibit 3, at 1. The hard copy of the letter was delivered and signed for on December 12, 2022 at 10:12 am. Proof of Delivery of December 10, 2022 Letter from Homrig to Kennedy, attached here to as Exhibit 4, at 1. Plaintiffs reiterated their requests for a copy of the Court-mandated notice. Plaintiffs also advised Defendants of the November 16 Rule 26(f) conference deadline and proposed various times to meet-and-confer. Neither of Defendants' lawyers responded to the letter.
- On December 14, 2022, Plaintiffs' counsel wrote again, copying both of Defendants' lawyers, reiterating the issues raised in its December 10 letter and again proposing times to meet-and-confer. December 14, 2022 Email from Homrig to Kennedy, attached hereto as Exhibit 5, at 1. Again, neither of Defendants' lawyers responded.

Plaintiffs have attempted to meet-and-confer with Defendants about a case schedule and discovery plan, but have been unable to do so because Defendants failed to respond. Consequently, Plaintiffs hereby advise the Court that the parties have not conducted a Rule 26(f) conference by today's deadline. Plaintiffs also advise the Court that Defendants have failed to provide any proof that they complied with the Court's TRO.

Plaintiffs will continue their efforts to comply with Rule 26(f). But, given Defendants' counsel's lack of responsiveness, those efforts may not be successful unless the Court directs Defendants to respond to Plaintiffs' communications, confer with Plaintiffs' counsel, and to supply evidence that they complied with the TRO.

Dated: December 16, 2022

/s/ Jeff Homrig
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*Attorneys for Plaintiffs Beaumont Chapter of the
NAACP and Jessica Daye*

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2022, a true and correct copy of the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

/s/ Jeff Homrig

Jeff Homrig (Bar No. 24129988)

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