

LAW OFFICES
BROWN, GOLDSTEIN & LEVY, LLP

120 East Baltimore Street, Suite 1700
Baltimore, Maryland 21202-6701

TEL: (410) 962-1030

FAX: (410) 385-0869

FAX COVER SHEET

TO: Ryan P. Phair, Esq.
Kathryn R. DeBord, Esq.
Daniel M. Nelson, Esq.
(fax no.: 202-879-5200)

John B. Isbister, Esq.
Daniel S. Katz, Esq.
Richard D. Rosenthal, Esq.
(fax no.: 410-727-5460)

Michael Berman, Esq.
Judith Arnold, Esq.
(fax no.: 410-576-6955)

FROM: Shelly M. Martin

DATE: May 13, 2004

NUMBER OF PAGES (including cover): 6

IF YOU HAVE ANY PROBLEMS RECEIVING THIS MATERIAL
PLEASE CALL 410-962-1030

Message:

CONFIDENTIALITY NOTICE

This facsimile contains confidential information that may also be legally privileged and that is intended only for the use of the Addressee(s) named above. If you are not the intended recipient or the agent responsible for delivering it to the intended recipient, please be advised that any dissemination or copying of this facsimile, or taking of any action in reliance on the information contained herein, is strictly prohibited. If you have received this facsimile in error, please notify us immediately by telephone and return it to us. Thank you!

1120/Voting

Brown
Goldstein
Levy ^{LLP}



120 E. Baltimore St.
Suite 1700
Baltimore, Maryland
21202-6701
Tel: 410 962-1030
Fax: 410 385-0869
www.browngold.com

E-Mail: smm@browngold.com

May 13, 2004

VIA FEDERAL EXPRESS

Clerk
Circuit Court for Anne Arundel County
7 1/2 Church Circle
Annapolis, Maryland 21401

Re: *Shade et. al. v. Maryland State Board of Election, et. al.*

Dear Clerk:

Enclosed please find the original and one copy of an Opposition to Plaintiffs' Notice of Intent to Oppose Motion to Intervene as Defendants. Please date stamp the copy and return it to me in the self-addressed, stamped envelope that I have provided for your convenience.

Thank you for your assistance in this matter.

Sincerely,

Shelly Marie Martin

SMM/tt
Enclosures

ALL VIA FAX AND FIRST CLASS MAIL

- cc: Ryan P. Phair, Esq.
- Kathryn R. DeBord, Esq.
- Daniel M. Nelson, Esq.
- John B. Isbister, Esq.
- Daniel S. Katz, Esq.
- Richard D. Rosenthal, Esq.
- Michael Berman, Esq.
- Judith Arnold, Esq.

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY

Schade, *et al.*,

*

Plaintiffs,

*

v.

*

Case No.: 02-C-04-097297

Maryland State Board of Election, *et al.*,

*

*

Defendants.

*

* * * * * 000 * * * * *

INTERVENORS' OPPOSITION TO PLAINTIFFS' NOTICE OF INTENT TO OPPOSE MOTION TO INTERVENE AS DEFENDANTS

The National Federation of the Blind of Maryland, Barry Hond, Mildred Rivera, Eileen Rivera Ley, and Thomas Ley, through their undersigned counsel, oppose the Plaintiffs' Notice of Intent to Oppose Motion to Intervene as Defendants in support thereof state:

The Plaintiffs have filed a "Notice" that they intend to oppose intervention in this case. Their "Notice" contains substantive argument, yet contemplates that Plaintiffs will file a second opposition to the motion. The Maryland Rules do not allow for parties to take two bites at the apply and file a "notice" followed by an opposition. The Plaintiffs' Notice should be stricken.

The proposed intervenors filed a motion to intervene on May 12, 2004, seeking to intervene in this case as defendants. As is explained in that motion, the existing Defendants were expected to file a motion to dismiss within days of the filing of the motion to intervene. Proposed intervenors suggested that rather than file their proposed motion to dismiss along with the motion to intervene, their proposed motion to dismiss be filed three days after the existing Defendants' motion. This proposed schedule has the benefit of allowing the proposed intervenors to address issues uniquely relevant to them without the necessity of re-visiting

globally applicable issues that are adequately addressed in the Defendants' motion. The Court has the authority to deviate from the precise strictures of Rule 2-214 where appropriate. The plaintiffs have offered no reason why this proposed schedule is not appropriate in this case.¹

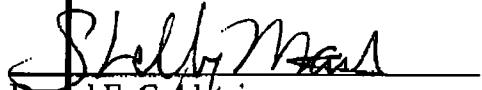
In any event, the Court may grant a motion to intervene even when no accompanying pleading is provided (or proposed to be provided at a later date). "[A]pparently without exception" courts do not deny motions to intervene based on the absence of a proposed pleading unless substantive reason for denial also exists. See 7C, Wright & Miller, *Federal Practice & Procedure* § 1914 (Supp. 2004). Thus, where the motion to intervene describes the intervenors' claims in sufficient detail to allow the parties to respond to the motion, courts will excuse the failure to file a proposed pleading. See, e.g., *Spring Construction Co., Inc. v. Lawyers Title Ins. Corp.*, 614 F.2d 374, 377 (4th Cir. 1980); *WJA Realty Ltd. P'ship v. Nelson*, 708 F. Supp. 1268, 1272 (S.D.FL. 1989); *McCausland v. Shareholders Management Co.*, 52 F.R.D. 521, 524 (D.N.Y. 1971); *Shores v. Hendy Realization Co.*, 133 F.3d 738, 742 (9th Cir. 1943).

Such is the case here, where proposed intervenors resolved previous litigation when the Defendants agreed to install the Diebold voting machines that the Plaintiffs are seeking to decertify. The factual allegations in the motion to intervene sufficiently apprise the parties of the basis of the proposed intervenors' claims.

¹Plaintiffs complain that the proposed intervenors did not provide an advance copy of their intervention motion to the Plaintiffs in advance. The Maryland Rules do not require parties to waive the work product protection by providing opponents with drafts of pleadings before they are filed.

WHEREFORE the Court should deny the relief sought in the Plaintiffs' Notice and allow the proposed intervenors to file a proposed motion to dismiss three days Defendants have filed their motion. A proposed order is attached.

Respectfully submitted,


Daniel F. Goldstein
Shelly Marie Martin
Brown Goldstein & Levy, LLP
120 E. Baltimore Street
Suite 1700
Baltimore, Maryland 21202
(410) 962-1030

Attorneys for Proposed Intervenors

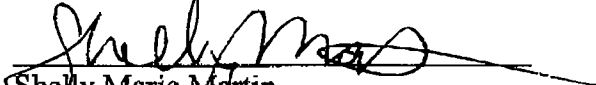
CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of May 2004, copies of the foregoing were faxed and mailed, first class, postage pre-paid to:

John B. Isbister, Esq. Daniel S. Katz, Esq., Richard D. Rosenthal, Esq., Tydings & Rosenberg LLP, 100 East Pratt Street, 26th Floor, Baltimore, Maryland 21202

Michael D. Berman, Esq., Judith A. Arnold, Esq., Office of the Attorney General, 200 St. Paul Place, 20th Floor, Baltimore, Maryland 21202-2004

Ryan P. Phair, Esq., Kathryn R. DeBoard, Esq., Daniel M. Nelson, Esq., Kirkland & Ellis, LLP, 655 15th St. NW, Suite 1200, Washington, D.C. 20005


Shelly Marie Martin

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY

Schade, *et al.*,

*

Plaintiffs,

*

v.

*

Case No.: 02-C-04-097297

Maryland State Board of Election, *et al.*

*

*

Defendants.

*

* * * * * oOo * * * * *

ORDER

Upon consideration of the Plaintiffs' Notice of Intent to Oppose Motion to Intervene as Defendants, and the relief requested therein, it is **ORDERED** that the relief requested be and hereby is **DENIED** this ____ day of May 2004; and it is further

ORDERED that the proposed intervenors shall their proposed motion to dismiss within three days of receipt of the Defendants' Motion to Dismiss

Judge, Circuit Court for Anne Arundel County