

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,)
)
Plaintiffs,)
)
v.)
)
GALE A. NORTON, Secretary of the Interior, et al.,)
)
Defendants.)
_____)

Case No. 1:96CV01285
(Judge Lamberth)

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR
ENLARGEMENT OF TIME TO SUBMIT EQUAL ACCESS TO JUSTICE
APPLICATION**

Plaintiffs' Motion For Enlargement Of Time To Submit Equal Access To Justice Act Application ("Motion For Enlargement") should be denied because it provides no persuasive reason for granting Plaintiffs additional time to re-file their EAJA application. More than eight months ago, on October 9, 2003, Plaintiffs filed their Request for an Award of Attorney's Fees and Expenses Pursuant to the Equal Access to Justice Act (Dkt # 2328) ("First EAJA Application"). Defendants opposed Plaintiffs' application on the ground that, among other things, they had not satisfied the threshold requirement of submitting contemporaneous time records with their petition. See Defendants' Opposition to Plaintiffs' Request For An Award Of Attorney's Fees And Expenses Pursuant To The Equal Access To Justice Act at 4-6 (filed October 23, 2004). Plaintiffs filed a Motion for Enlargement of Time Within Which to File Supporting Attorney and Expert Witness Documentation re EAJA Fee Application (Dkt. # 2345) on October 23, 2003 ("First Motion For Enlargement") and then subsequently filed their Motion for Expedited Consideration of Plaintiffs' Various Applications for Fees and Costs (Dkt. #2545)

on March 19, 2004. On May 27, 2004, the Court denied Plaintiffs' First EAJA Petition, denied their First Motion For Enlargement and ordered Plaintiffs to re-file an EAJA application for interim fees through the Phase 1.0 proceeding "within thirty days," this time with supporting documentation.¹ Memorandum and Order, May 27, 2004 (Dkt. # 2583) ("May 27, 2004 Order") at 10. Plaintiffs' filing of their most recent Motion For Enlargement – eight months after they filed their first EAJA application, after they filed a motion for expedited consideration, and despite having been granted an additional thirty days – suggests they remain unable to produce contemporaneous time records.

Although Plaintiffs claim they are "keenly aware of the time required to properly evaluate time records," Motion For Enlargement at 1, they fail to explain why they did not perform that due diligence prior to submitting their First EAJA Application in October 2003, or why they have not done so in the eight months since that time. Plaintiffs attempt to make the case that the Court's May 27, 2004 Order unexpectedly thrust a substantial new burden upon them with which they cannot comply, citing other competing case demands. Motion For Enlargement at 1-2. To the contrary, none of the reasons they cite for delay sprang up as a result of the Court's recent order, and all existed well before that time.²

The competing task of having to produce documentation for a fee award in connection

¹ Plaintiffs already requested sixty days in both their First EAJA Application and their First Motion For Enlargement; however, the Court ordered Plaintiffs to re-file their petition with supporting documentation within thirty days. May 27, 2004 Order at 4.

² Indeed, since Plaintiffs stated in their 1996 Complaint that they intended to seek fees pursuant to EAJA, see Complaint at 27, ¶5, they presumably have been aware for eight years that they would have to produce contemporaneous time records to recover under EAJA, if they otherwise qualified for an EAJA award.

with Defendants' Third Motion For Summary Judgment should not serve as an excuse for Plaintiffs' delay in filing their EAJA application. More than fifteen months have elapsed since the Court granted Plaintiffs' request for fees in connection with that motion and Plaintiffs have since completed their fee application. See Memorandum and Order dated March 11, 2003 (Dkt. # 1898) (granting Plaintiffs' request for monetary sanctions and ordering Plaintiffs to submit a filing detailing expenses and attorneys fees within 30 days)³; Plaintiffs' Statement of Fees and Expenses in Accordance with the Court's March 11, 2003 Order (filed June 21, 2004). Although the Court subsequently granted Plaintiffs an enlargement of time in which to submit the necessary documentation for that fee award, until June 25, 2004, see Order (Dkt. # 2581), it should have come as no surprise to Plaintiffs that they would eventually have to produce documentation to support their request for sanctions.

³ Defendants filed a motion for reconsideration, which the Court denied on May 25, 2004. See Order (Dkt. # 2581).

Conclusion

For these reasons, Defendants respectfully request that the Court deny Plaintiffs' Motion For Enlargement.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on June 22, 2004 the foregoing *Defendants' Opposition to Plaintiffs' Motion for Enlargement of Time to Submit Equal Access to Justice Application* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

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ORDER

This matter comes before the Court on the *Plaintiffs' Motion for Enlargement of Time to Submit Equal Access To Justice Act Application*, Dkt # 2593. Upon consideration of Plaintiffs' Motion, Defendants' Opposition, any Reply thereto, the applicable law and the entire record of this case, it is hereby

ORDERED that the Motion is, DENIED.

SO ORDERED

Hon. Royce C. Lamberth
UNITED STATES DISTRICT JUDGE
United States District Court for the
District of Columbia

Date: _____

cc:

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