

COURT CASES OF INTEREST – 1998

SUBJECT (check the one that applies)

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| <input type="checkbox"/> Elections | <input type="checkbox"/> Ballot Designations | <input type="checkbox"/> Candidate Statements |
| <input type="checkbox"/> Nomination Petitions | <input type="checkbox"/> Recall Petitions | <input type="checkbox"/> Initiative/Referendum Petitions |
| <input type="checkbox"/> Electioneering | <input type="checkbox"/> Residency | <input type="checkbox"/> Voter Fraud |
| <input type="checkbox"/> Campaign Disclosure | <input type="checkbox"/> Sample Ballot | <input type="checkbox"/> Other _____ |

COUNTY Humboldt

WHO SUED WHOM David Elsebusch v. Humboldt County and Lindsey McWilliams

(Names of parties involved in suit)

COURT Humboldt Superior and Municipal Court

CONTACT FOR MORE INFORMATION:

Lindsey McWilliams 707-268-2544 707-445-7533
(Name) (Phone) (FAX)

DESCRIBE CASE (Attach additional pages if necessary): Mr. Elsebusch was one of six candidates for three seats on the McKinleyville Community Services District board at the November 1997 UDEL. On Election day he was the third highest vote-getter; at the end of the official canvass he was fourth, fifteen voted behind the third-place candidate. Mr. Elsebusch requested a recount, was advised the cost would be \$2,000.93. Although objecting to the cost, he supplied the required deposit and a recount was conducted wherein he increased his vote total by one. For several months he sought administrative recovery of the \$2,000.93 alleging that he had not received the recount he had requested. That is, he thought he should get a consecutive count rather than a concurrent count; his initial request did not request a consecutive count nor did it state a particular order for the ballots to be counted. The County Risk Manager rejected all claims. In May, Mr. Elsebusch filed a breach of contract suit arguing that the recount was actually contractual services and that verbal statements made between the Elections Official and his staff and Mr. Elsebusch created an expectation for certain services and procedures which were not provided.

DESCRIBE DECISION/AGREEMENT REACHED: The Court first sustained the demurrer on McWilliams, ruling that the plaintiff could not sue the Elections Official as an individual, and allowed Mr. Elsebusch to amend his complaint. Plaintiff filed an amended complaint which the Court heard and ruled that there was no contract, verbal or otherwise; and that recount procedures were set by statute and there was no discretion on the part of the Elections Official to enter into a contractual relationship. A notice of entry of judgment is pending at which time the plaintiff's 30-day appeal period begins.

ELECTION OFFICIAL OPINION/IMPACT OF DECISION: This case was filed as a breach of contract suit because the plaintiff was not aware of the statutory limits on filing lawsuits contesting the election itself. Mr. Elsebusch has since become a supporter and advisor to a candidate for Fifth District County Supervisor. This candidate lost to the incumbent by 51 votes and, partly at the urging of Mr. Elsebusch, requested a recount. The candidate stopped the recount before completion without the vote difference changing.

ATTACHMENT: YES NO I WILL PROVIDE UPON REQUEST