

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE**

IN THE MATTER OF:)
)
)
Local Government Center, Inc. et al) Case No.: C-2011000036
)
RESPONDENTS)
)

SCHEDULING ORDER AND NOTICE OF HEARING

BACKGROUND

In its January 10, 2014 decision, the Supreme Court remanded the issue of costs to be determined by further administrative proceedings. The Omnibus Order issued by the undersigned presiding officer on August 4, 2014 incorporated a consensual agreement among the parties that addressed, but has not finally resolved, the remanded issue of costs. Instead, upon the representation of counsel that settlement was probable the order provided an additional ten (10) days for counsel to reach agreement on that issue or that a hearing would be scheduled to consider that issue. On August 14, 2014 the presiding officer was informed that the parties had not reached settlement, but that the parties did not believe that a hearing was necessary at that time. On September 8, 2014 the presiding officer issued an administrative notice that requested that the parties to report their settlement by joint agreement or, otherwise indicate individual settlement perspectives in separate reports as the planning and logistics for a hearing on the remanded issue was in progress.

As of September 23, no communication in either form had been received and what had been expected for resolution of the issue to be accomplished by the parties by August 14, 2014 had slid for an additional 5 weeks with no

representation of any significant progress towards settlement. Therefore, a preliminary hearing on the issue of costs remanded by the Supreme Court was conducted on Monday, October 6, 2014. A brief overview of settlement efforts was addressed by counsel, a discussion ensued regarding related litigation involving the parties, jurisdictional authority to determine costs of supreme court appeals, relevancy of respondents' costs to a determination of the reasonableness of the BSR costs expended and the presiding officer's expression of the evidentiary value of knowing the costs expended by both sides in these administrative proceedings in order to make a determination of whether the costs presented by the BSR for reimbursement are reasonable and to reach a proper and legal decision on that issue. Counsel informally expressed their individual opinions in that regard. The presiding officer urged the parties to continue their efforts to settle this complex issue without the necessity of additional formal proceedings and the parties expressed their interest in doing so to avoid additional costs to the taxpayers. The parties have not utilized the services of a mediator to address their dispute on this issue and the use of a mediator was raised as a possible consideration to resolve this final aspect of these administrative proceedings.

The following orders follow the conclusion of the above referenced preliminary hearing:

1. The parties shall continue to attempt to settle this matter with or without the services of a mediator agreeable to all parties. The costs of any mediation shall be deemed a reasonable cost of these administrative proceedings and shall be the responsibility of the respondents.
2. If the parties agree to the use of a mediator, the presiding officer shall be notified in writing on or before October 13, 2014 of that

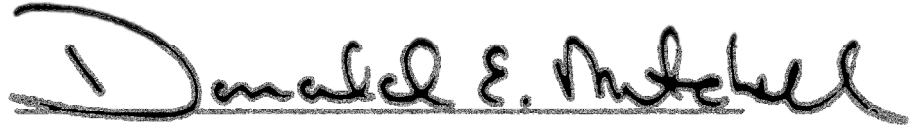
intent, the name of the mediator and the scheduled date mediation is to occur.

3. Notwithstanding the above, the HealthTrust, Inc. and the Property Liability Trust, Inc. and their predecessors in interest, known in these proceedings as the “LGC and its entities,” shall, on or before November 10, 2014, provide copies of all legal and other bills incurred by them related to their defense of the allegations brought by the BSR that made these administrative proceedings necessary.
4. As the allegations of the BSR were not sufficiently proven against any individual respondent named in its initial petition, as amended, it cannot be stated that the Secretary of State prevailed upon any of these individual respondents. Therefore, no such individual named as a respondent in these matters is subject to the production of documents called for within this order because RSA 5-A:4-a IV allows reimbursement for costs from a respondent only “upon the secretary of state's prevailing at hearing.”
5. Such reasonable and conservative redaction of terms appearing in invoices, bills, vouchers, etc. deemed necessary by the relevant respondents to preserve any assertion of privileged communication may be made prior to provision to the BSR. Any dispute arising from such redaction shall be resolved by submission of the disputed document(s) to the presiding officer for review at least one week prior to the start of the evidentiary hearing scheduled below.
6. To the extent that the BSR has not submitted its costs fully to the respondents from which it seeks reimbursement, it shall do so immediately without delay.

7. The parties shall prepare memoranda of law in support of any motion or objection, as appropriate, related to their positions on any jurisdictional issues including the jurisdictional authority of the presiding officer in these administrative proceedings to determine the reasonableness of costs expended for appeal to the supreme court no later than November 10, 2014.
8. Any expert witness(s) to be called by the BSR shall be identified and provided to relevant respondents no later than October 20, 2014. Counsel for any relevant respondent shall identify and inform the BSR of any expert witness to be called on their behalf no later than October 30, 2014.
9. The parties have previously elected to have the services of a stenographer/transcriptionist present at all formal hearings and should make arrangements on the occasion of this evidentiary hearing to do so as well, and shall also determine the manner by which those services shall be compensated.

An evidentiary hearing on the remanded issue of costs shall be conducted beginning at **9:30 AM on Monday, November 17, 2014 in Concord** at a specific location to be determined and provided to the parties at a latter date. The hearing shall continue, if necessary, from day to day until November 20, 2014 at which time it shall be recessed for November 20th and 21st and then reconvened on November 24, 2014 and shall continue thereafter form day to day as ordered until completed.

So ordered this 8th day of October, 2014

A handwritten signature in black ink that reads "Donald E. Mitchell". The signature is written in a cursive style with a large, prominent initial "D".

Donald E. Mitchell, Esq., NH Bar #1773
Presiding Officer

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