

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

NAACP HOUSTON BRANCH

and

Case 16-CA-27783

TRACIE JACKSON, an Individual

MOTION TO FILE BRIEF AND EXCEPTIONS OUTSIDE OF DEADLINE

COMES NOW Respondent, NAACP Houston Branch, and files this Motion to File Brief and Exceptions Outside of Deadline as follows:

The Brief and Exceptions in this case were due on Monday, August 29, 2011. The NAACP believed, in good faith, that the Brief and Exceptions were required to be served on the NLRB and all opposing counsel on August 29, 2011 in accordance with the Federal Rules of Civil Procedure 5(b) which permits service to be effective on the date it is postmarked by mail. As a result, the NAACP believed that the Brief and Exceptions would be deemed timely if they were postmarked on Monday, August 29, 2011; thus, we forwarded both the Brief and Exceptions to the NLRB by Federal Express Air Mail postmarked on August 29, 2011 for one day delivery. The NAACP also served each opposing counsel with the Brief and Exceptions on August 29, 2011. The NLRB received the Brief and Exceptions on August 30, 2011.

On September 7, 2011, the Associate Executive Secretary for the NLRB forwarded a letter to the NAACP which indicated that the Brief and Exceptions were deemed untimely because they were not postmarked by no later than Sunday, August 28, 2011. Due to the NAACP's good faith belief that the Brief and Exceptions would be deemed timely if they were

served on August 29, 2011, it excusably neglected to ensure the documents were received by the NLRB before 5:00 p.m. on August 29, 2011 as was required. This excusable neglect was based upon its reliance upon the service requirements of the Federal Rules of Civil Procedure.

Although the Brief and Exceptions were not received by the NLRB until the following day, August 30, 2011, there is no showing that any undue prejudice would result if the NLRB accepts and considers the NAACP's Brief and Exceptions at this time. Therefore, the NAACP earnestly requests the NLRB to grant this Motion and accept the filing of the NAACP's Brief and Exceptions it received on August 30, 2011.

Prayer

For these reasons, Respondent asks the Board to grant its request to file its Brief and Exceptions outside of the deadline, and grant all other relief the Board deems appropriate.

DATED: September 12, 2011

Respectfully submitted,

/s/ James M. Douglas

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Respectfully submitted,

s/ Melvin Houston

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CERTIFICATE OF SERVICE

I certify that a true copy of the above was served on the following individuals and parties by e-mail transmission on September 12, 2011.

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/s/ Melvin Houston

JAMES M. DOUGLAS

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AFFIDAVIT OF MELVIN HOUSTON

STATE OF TEXAS §

§

HARRIS COUNTY §

BEFORE ME, the undersigned authority, on this day personally appeared MELVIN HOUSTON, who, after being duly sworn, did depose and state as follows under penalty of perjury:

1. "My name is MELVIN HOUSTON. I am over 18 years of age and am competent to make this affidavit. My statements herein are based on my personal knowledge, and they are true and correct.

2. The Brief and Exceptions in this case were due on Monday, August 29, 2011. I believed, in good faith, that the Brief and Exceptions were required to be served on the NLRB and all opposing counsel in accordance with the Federal Rules of Civil Procedure 5(b) which permits service to be effective on the date it is postmarked by mail. As a result, I believed that the Brief and Exceptions would be deemed timely if they were postmarked on Monday, August 29, 2011; thus, we forwarded both the Brief and Exceptions to the NLRB by Federal Express Air Mail postmarked on August 29, 2011 for one day delivery. We also served each opposing counsel with the Brief and Exceptions on August 29, 2011. The NLRB received the Brief and Exceptions on August 30, 2011.

3. On September 7, 2011, the Associate Executive Secretary for the NLRB faxed me a letter which indicated that the Brief and Exceptions were deemed untimely because they were not postmarked by no later than Sunday, August 28, 2011. After receipt of the letter, I realized that, due to my good faith belief that the Brief and Exceptions would be deemed timely if they

were served on August 29, 2011, I excusably neglected to ensure the documents were received by the NLRB before 5:00 p.m. on August 29, 2011 as was required. This excusable neglect was based upon my reliance upon the service requirements of the Federal Rules of Civil Procedure.

4. Although the Brief and Exceptions were not received by the NLRB until the following day, August 30, 2011, there is no showing that any undue prejudice would result if the NLRB accepts and considers the NAACP's Brief and Exceptions at this time. Therefore, the NAACP earnestly requests the NLRB to grant this Motion and accept the filing of the NAACP's Brief and Exceptions it received on August 30, 2011.

Further Affiant sayeth not."


Melvin Houston

This instrument was acknowledged before me on 9-12-11.




Notary Public's Signature