

THE EPISCOPAL DIOCESE OF
FORT WORTH, THE CORPORATION OF
THE EPISCOPAL DIOCESE OF FORT
WORTH, and THE EPISCOPAL CHURCH,

Plaintiffs

v.

FRANKLIN SALAZAR, JO ANN PATTON,
WALTER VIRDEN III, ROD BARBER,
CHAD BATES, JACK LEO IKER, and THE
ANGLICAN PROVINCE OF THE
SOUTHERN CONE'S "DIOCESE OF FORT
WORTH," holding itself out as "THE
EPISCOPAL DIOCESE OF FORT WORTH,"

Defendants/Third-Party Plaintiff

v.

EDWIN F. GULICK, JR., MARGARET
MIEULI, WALT CABE, ANNE T. BASS,
J. FREDERICK BARBER, CHRISTOPHER
JAMBOR, DAVID MADISON and KATHLEEN
WELLS

Third-Party Defendants

IN THE DISTRICT COURT

TARRANT COUNTY, TEXAS

141ST JUDICIAL DISTRICT

**MEMORANDUM BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE THIRD-
PARTY PETITION OF DEFENDANT THE EPISCOPAL DIOCESE OF FORT WORTH**

TO THIS HONORABLE COURT:

Defendant The Episcopal Diocese of Fort Worth, who is wrongly named in Plaintiffs' Original Petition and First Amended Original Petition as The Anglican Province of The Southern Cone's "Diocese of Fort Worth," hereafter "Movant," submits this memorandum brief in support of Movant's motion for leave to file third-party petition to assist the Court in ruling on the motion.

Issue

Does the Court abuse discretion if the motion for leave to file third-party petition is not granted unless it is established that the granting of the motion will unreasonably delay a final disposition of this case?

Motion for Leave to File Third-Party Petition

Movant has filed its motion for leave to file a third-party petition pursuant to Rule 38, Texas Rules of Civil Procedure, against individuals claiming to be officials of Movant. The motion explains that there is only one Texas unincorporated association named The Episcopal Diocese of Fort Worth and the dispute created by the petitions filed with this Court presents the issue who are the lawfully elected officials of Movant?

Response of Plaintiffs to Motion for Leave to File Third-Party Petition

Plaintiffs respond to the motion for leave to file alleging that the Court must rule on Plaintiffs' Motion for Partial Summary Judgment before considering this motion. It is further argued that a motion for summary judgment should be filed by Movant instead of a motion for leave to file a third-party petition. The response concludes that this motion for leave to file third-party petition should be heard with the motion for partial summary judgment.

Standard for Ruling on the Motion

The standard is well-stated in *In re Arthur Andersen LLP*, 121 S.W.3d 471, 483 (Tex. App. – Houston [14th Dist.] 2003, no pet.), where the court writes that “the key is whether a delay is reasonable under the facts and circumstances of the suit, keeping in mind the history of the suit, and not simply that a delay will occur.” While the granting or denying of the motion is within the sound discretion of a trial court, the appellate courts, as well as leading commentators, agree that leave to file such a petition should be “liberally granted.” 121 S.W.3d 483.

“However, mandamus relief is appropriate if the trial court abuses that discretion,” the Houston 14th Dist. points out. 121 S.W.3d 484. See also *Jones v. Ray*, 886 S.W.2d 817, 822-23 (Tex. App. – Houston [1st Dist.] 1994, orig. proceeding).

Plaintiffs’ Response Without Legal Authority

A careful review of Texas appellate opinions fails to disclose a single reported opinion supporting Plaintiffs’ opposition to the granting of leave to file the third-party petition, which seeks to add as parties those individuals claiming to be officers in Plaintiff diocese, who have instituted this suit. It is significant that Plaintiffs have cited no opinion in support of their position.

Undisputed Facts Requiring Granting of Motion

This motion for leave to file third-party petition is filed early in these proceedings. Discovery is in its very early stages. The parties sought to be added are already involved in these proceedings as alleged officials of Movant. The addition of these parties will cause no delay to a final disposition of the suit and will permit a complete determination of the issues raised by the current trial pleadings.

WHEREFORE, PREMISES CONSIDERED, Defendant/Third-Party Plaintiff The Episcopal Diocese of Fort Worth respectfully prays that the Court grant leave to file the third-party petition attached to its motion.

Respectfully submitted,



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WORTH**

CERTIFICATE OF SERVICE


I hereby certify that a true and correct copy of the foregoing MEMORANDUM BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE THIRD-PARTY PETITION OF DEFENDANT THE EPISCOPAL DIOCESE OF FORT WORTH has been served as required by Texas Rules of Civil Procedure, by facsimile transmission, on all counsel on this 1st day of October, 2009, as follows:

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