

untimely. The Fifth Circuit already has ruled for plaintiff on the timeliness of the motion for attorneys' fees plaintiff filed in the Fifth Circuit in reference to work done on his appeal. The motion Gibson filed on September 30, 2009, for recovery of fees incurred in this court was timely under the procedure prescribed by Rule 54(d)(2) of the Federal Rules of Civil Procedure. The latter motion was filed no later than fourteen days after entry by this court of final judgment on September 16, 2009. The court is mentioning its conclusions on the timeliness issues so that the parties will not unnecessarily devote time to those issues between now and the date of the hearing or at the hearing.

The court notes that in a motion plaintiff, through Gibson, filed September 30, 2009, reference is made to "[t]he affidavit of *John J. McKetta III*, which has been filed separately in this cause." Mot. for [Dist. Ct.] Att'ys' Fees filed Sept. 30, 2009, at 6. The court is unable to find an affidavit of John J. McKetta III in the papers in this action. If plaintiff wishes the court to be aware of the contents of such an affidavit, plaintiff must file it in this action by 2:00 p.m. on January 8, 2010, and provide a copy to opposing counsel by that same time and date.

The court ORDERS that a hearing of the kind contemplated by the first paragraph of this order be held at 10:00 a.m. on January 14, 2010, at which time lead counsel for the parties and all witnesses who are to testify at the hearing are to be present in the Fourth Floor Courtroom, United States Courthouse, Fort Worth, Texas.

The court further ORDERS that:

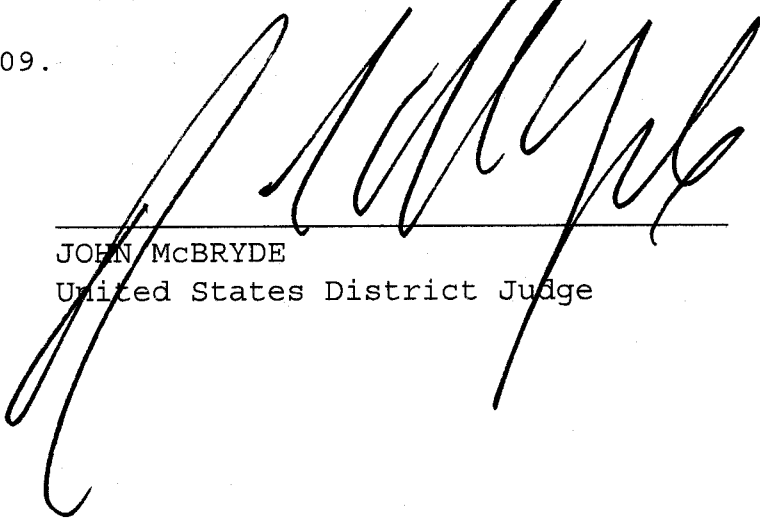
- (1) By 2:00 p.m. on January 8, 2010, plaintiff and defendant each shall file a witness list and an exhibit list.
- (2) The parties shall not file exhibits prior to the hearing, but shall have the originals and one copy thereof available immediately prior to the hearing. Each exhibit that will be offered at the hearing shall bear the case number of this action in addition to the exhibit number and identity of offering party.
- (3) The witness list shall be accompanied, when it is filed, by a statement as to each witness of each subject matter upon which the witness will be asked to testify. The witness list shall include one column bearing the heading "Sworn" and another bearing the

heading "Testified" to help the court keep track of the witnesses at the hearing.

- (4) The exhibit list shall be accompanied, when it is filed, by a statement signed by counsel for each party, other than the party who will be offering the exhibit, stating as to each exhibit shown on the list either that the parties agree to the admissibility of the exhibit or the nature and legal basis of any objection that will be made to the admissibility of the exhibit and the identity of the party or parties who will be urging the objection. All parties are required to cooperate in causing such statements to be prepared in a timely manner for filing with the exhibit lists. The party proposing to offer an exhibit shall be responsible for coordinating activities related to preparation of such a statement as to the exhibit such party proposes to offer. No exhibit will be offered at the hearing unless such a statement has been timely filed as to the exhibit. The exhibit list shall include one column bearing the heading "Offered" and another bearing the heading "Admitted."

(5) No party is permitted to adopt as, or in, the party's witness list or exhibit list all or any part of the witness list or exhibit list of the other party.

SIGNED December 22, 2009.



JOHN MCBRYDE
United States District Judge