

19th JUDICIAL DISTRICT COURT  
FOR THE PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA

ASHLEY-ROXANNE N'DAKPRI,  
LYNN SCHOFIELD, and EVANGELA  
MICHELLE ROBERTSON,

Plaintiffs,

v.

LOUISIANA STATE BOARD OF  
COSMETOLOGY, STEVE YOUNG in  
his official capacity as executive director  
of the Board, and FRANCES HAND,  
WILLIAM MICHAEL GRAYSON,  
EDWIN H. NEILL, III, JAMES  
WILLIAMS, MELINDA TILLEY,  
MELLA BROWN, DEIDRE DELPIT,  
and ELIZA JILL HEBERT, in their  
official capacities as members of the  
Board.

Defendants.

SUIT NO. 684468

SECTION: 25

DIVISION "CIVIL"

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF  
MOTION FOR A PRETRIAL CONFERENCE OR, ALTERNATIVELY, A  
STATUS CONFERENCE**

MAY IT PLEASE THE COURT:

Plaintiffs Ashley-Roxanne N'Dakpri and Lynn Schofield sued the State Board of Cosmetology and its members in June 2019. Three years later, this Court denied Plaintiffs' Motion for Summary Judgment. The Court concluded then (in March 2022) that final resolution of this case requires a trial. Since then, however, Plaintiffs have again and again tried to move toward trial. But the Board refuses to complete its portion of the pretrial order, as required by Local Rule 9.14(1), leaving this case in limbo. This Court's intervention is necessary to resolve the impasse. Plaintiffs urge the Court to either (1) schedule a pretrial conference and order the parties to submit a joint proposed pretrial order, *see* Loc. R. 9.14(7), or (2) schedule a status conference to address the Board's sustained resistance to a trial on the merits, *see* Loc. R. 9.14(8).

RECEIVED

September 02, 2022

DIVISION O  
JUDGE FIELDS

## **BACKGROUND**

Plaintiffs are natural hair braiders. They sued the State Board of Cosmetology in June 2019 after the Board interpreted Louisiana's cosmetology laws to apply to all compensated hair braiding, requiring even natural hair braiders like Plaintiffs to obtain 500 hours of irrelevant training and an alternative hair design permit. Plaintiffs' lawsuit seeks no damages. They only seek declaratory and injunctive relief recognizing that (1) the permit requirement violates the state constitutional right to practice one's occupation free from unreasonable government interference, and (2) the Board violated the separation of powers when it decided to regulate natural hair braiding although nothing in the cosmetology statute requires it to do so.

The Board filed an Exceptions motion, which this Court denied in December 2019, and the parties have been engaged in discovery ever since. Plaintiffs have answered the Board's extensive written discovery requests. They have sat for depositions. At several junctures, they have provided supplemental discovery to address the Board's requests for additional information.

After Plaintiffs filed a Motion for Summary Judgment in September 2021, the Board filed a second Exceptions motion. The Board's motion argued that Plaintiffs lack standing because—over more than three years of litigation—Lynn Schofield's natural-hair-braiding business has closed and Ashley N'Dakpri's business has largely stopped making money. After a hearing on March 28, 2022, this Court denied both motions, concluding that (1) Plaintiffs still have standing despite the decline of their businesses, and (2) genuine disputes of material fact require this case to go to trial.

## **ARGUMENT**

In nearly six months since this Court determined that a trial is necessary, Plaintiffs have worked diligently to follow pretrial procedures and cooperatively set a trial date. At every turn, the Board has raised baseless obstacles when it has not ignored Plaintiffs entirely. As a result, this case is no closer to trial today than it was

in March. Given the Board's unwillingness to cooperate, the Court should either (1) set a pretrial conference and order the parties to submit a joint proposed pretrial order; or (2) set a status conference to resolve the impasse.

### **I. The Board Is Baselessly Delaying Trial.**

After the March 28 hearing, Plaintiffs' counsel contacted the Board's attorneys to discuss pretrial issues, including whether the parties could agree to stipulations. *See* Ex. 2, Pls.' Email to Defs. (Apr. 5, 2022). The Board wanted to discuss "outstanding discovery" issues before discussing pretrial matters. *See* Ex. 3, Defs.' Email to Pls. (Apr. 6, 2022).

The Board raised this "outstanding discovery" at the March 28 hearing.<sup>1</sup> The gist of the Board's "outstanding discovery" argument is that the case cannot go to trial until Plaintiffs produce comprehensive personal and business financial records. But Plaintiffs do not seek economic damages—only prospective declaratory and injunctive relief—making evidence of economic harm irrelevant. *Cf.* Ex. 1, Ltr. to Ms. Morris (Feb. 8, 2022). Nevertheless, Plaintiffs agreed to discuss the Board's "outstanding discovery" issue in a conference call on April 13. *See* Ex. 4, Pls.' Email to Defs. (Apr. 7, 2022). Additionally, counsel agreed to waive the notice requirement to allow the April 13 call to serve as a Rule 10.1 Conference. *See id.*

On the call, Plaintiffs agreed to produce the requested financial documents.<sup>2</sup> They also agreed to prepare a first draft of a joint stipulation of facts for trial, based on the many things the parties did not contest during summary judgment briefing. Plaintiffs sent a draft of the joint stipulation on April 25, and the Board's attorneys acknowledged receipt the next day. *See* Ex. 6, Defs.' Email to Pls.' (Apr. 26, 2022). On June 8, Plaintiffs produced documents more than sufficient to show their businesses'

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<sup>1</sup> *See* Ex. 5, Hearing Trans. at 7 ("Lastly, we requested financial records from [Plaintiff Schofield] relevant to her economic harm, because in her petition she argues that she's been financially burdened by this permitting requirement. She has not produced those records . . .").

<sup>2</sup> Plaintiffs maintain that these records are irrelevant and inadmissible.

financial condition for purposes of trial, as well as an updated draft of the joint stipulation that reflected the documents' contents. *See* Ex. 7, Pls.' Email to Defs. (June 8, 2022). The Board's attorneys did not respond either to acknowledge receipt or to offer comments on the draft joint stipulation. One month later, on July 7, Plaintiffs again emailed them to request comments on the draft stipulation and seeking agreement about a date for trial. *See* Ex. 8, Pls.' Email to Def. (July 7, 2022). Again, no response.

On August 18, Plaintiffs emailed the Board with another request for their portion of the proposed pretrial order pursuant to Local Rule 9.14(2)(B). *See* Ex. 9, Pls.' Email to Defs. (Aug. 18, 2022). A week later, the Board's attorneys responded for the first time in four months. *See* Ex. 10, Defs.' Let. To Pls. (Aug 26, 2022). They again refused to provide their portion of the proposed pretrial order or provide any comments on Plaintiffs' draft of the joint fact stipulation. *See id.* They only renewed their objection that discovery is incomplete, arguing that Plaintiffs' June 8 production was insufficient and not made in good faith. *See id.*

The Board's renewed objection—raised after four months of radio silence—is as baseless as it is late. Plaintiffs have already produced what they have; and they turned over many irrelevant materials in a show of good faith. The Board is not entitled to additional information. What the Board is seeking now is a detailed financial accounting that will be inadmissible at trial. As the attached communications show, Plaintiffs have bent over backwards to cooperate. This Court's intervention is needed for this case to move forward.

## **II. The Court Should Hold a Pretrial Conference or, Alternatively, a Status Conference.**

The Local Rules require a pretrial conference before cases are set for trial. Loc. R. 9.14(1). To request a pretrial conference, the parties must submit a proposed pretrial order. *Id.* Completing the proposed pretrial order requires the parties to cooperate in good faith, as no party can include all the necessary components of a

proposed pretrial order on their own. *See* Loc. R. 9.14(3) (requiring the proposed order include statements from both parties). If the parties cannot cooperate, the Local Rules provide two options: (1) a party may request, with a showing of good cause, waiver of the proposed order requirement, *see* Loc. R. 9.14(7), or (2) a party may request a status conference to resolve “any impediment to the holding of a pretrial conference,” *see* Loc. R. 9.14(8).

The Local Rules require parties to cooperate in good faith to complete necessary pretrial procedures. The Board’s refusal to communicate for four months, only to again raise frivolous discovery issues, is not cooperation in good faith. Plaintiffs therefore make a showing of good cause pursuant to Local Rule 9.14(7) and the Court should waive the proposed-pretrial-order requirement and move directly to a pretrial conference where a trial date can be set. In the alternative, Plaintiffs have identified an impediment preventing the holding of a pretrial conference that justifies holding a status conference.

### **CONCLUSION**

For these reasons, Plaintiffs’ Motion for a Pretrial Conference or, alternatively, a Status Conference should be granted and the Court should set a pretrial conference.

Dated: September 1, 2022

Respectfully submitted,

**INSTITUTE FOR JUSTICE**

/s/ Keith Neely

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Memorandum in Support of Plaintiffs' Motion for a Pretrial Conference or, Alternatively, a Status Conference*, has been served on all counsel of record by email pursuant to La. CCP 1313, including:

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