

STATE OF VERMONT
JUDICIAL CONDUCT BOARD

In Re: _____)
Judge Paul Kane _____)
_____)

JCB Docket No. 16.004

MOTION IN LIMINE TO PRECLUDE RESPONDENT
FROM CALLING WITNESSES OR INTRODUCING EXHIBITS
IN HIS CASE IN CHIEF

In its 2/1/17 and 2/23/17 Entry Orders the Board instructed the parties to submit Pretrial Memoranda and to include stipulated facts (if any), witness lists and proposed exhibits no later than March 13, 2017. That date has come and gone, and Respondent has no pretrial materials at all. As a result, neither the Board nor Board Counsel has any idea what to expect from Respondent next week. Board Counsel in particular is prejudiced by having no idea who Respondent might call at trial, and no idea what documentary evidence Respondent might try to use to support his defense.

Respondent's failure to comply with the Board's pretrial Entry Orders is only the latest example of his puzzling disengagement with this case. By way of example:

- Board Counsel propounded discovery requests upon Respondent on September 14, 2016, making them due October 14, 2017. Despite repeated demands for a response, Respondent did not produce interrogatory responses until December 5, 2016, just two days before Respondent's deposition, and even then the responses were unsigned. Respondent did not produce documents until many weeks after his deposition.
- Respondent's counsel wrote Board Counsel on December 2, 2016 accusing him of failing to respond to Respondent's discovery requests. In fact, Board Counsel had long before produced discovery responses, on September 22, 2016, less than two weeks after Respondent's discovery requests were propounded, and thus well before they were due.
- At the February 14, 2017 telephonic status conference Respondent's counsel insisted on having an opportunity to respond to Board Counsel's Motion to Compel Testimony from Attorney Chris Moore. Chairman Adler granted that request, allowing Respondent's counsel until February 22 to file a response. Even after requesting that extra time to respond due to his busy schedule, Respondent's counsel filed no response by the deadline, or ever. As a result Board Counsel's Motion was granted as unopposed.

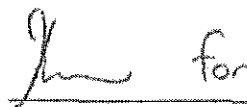
- Respondent's counsel protested that he never received notice of Lynda Walker's February 8 deposition. He did, by correspondence dated January 17.
- Respondent's counsel protested that he never received notice of Chris Moore's March 10 deposition. He did, by correspondence dated February 24.

As the foregoing shows, Respondent's lack of diligence has complicated this proceeding from the outset. Now that trial is less than a week away, this pattern should not be indulged further. Allowing Mr. Kane to present a case without meeting the Board's pretrial directives would simultaneously punish compliance and reward non-compliance.

The Board's Entry Orders calling for pretrial disclosures are *orders*; they are not *suggestions*. They are designed to provide both the Board, and opposing counsel, with an overview of the evidence to be introduced at trial so that trial preparations can proceed fairly and without advantage to one side or the other. Above all else, pretrial memoranda are designed to avoid trial by ambush. Yet that is exactly what Board Counsel now faces.

If there is one overarching theme in this case, it is that Respondent does not appear to understand that Vermont law applies to him. Allowing Respondent to flout this Board's pretrial Orders without consequence would only serve to reinforce that misconception.

Dated in Burlington, Vermont this 14th day of March, 2017.



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