Chris Harris

From: Ian Carleton <icarleton@sheeheyvt.com>
Sent: Thursday, March 16, 2017 4:25 AM
To: Steven Adler; Chris Harris; melawyer@comcast.net; Linda
Cc: Stacey Reyome
Subject: In Re: Paul Kane (JCB 16.004) -- Board Counsel's Reply in further support of motions in limine

Chairman Adler,

Unfortunately my access to my work server, which exists solely on the cloud, is very spotty from England. As a result, it would be enormously cumbersome this morning to convert the text below into a formal pleading to be submitted via PDF attachment to email. In the interests of time, I ask the Board's indulgence in accepting this Reply Memorandum in email format. This is a time-sensitive pleading.

Reply In Further Support Of Motions In Limine

Respondent's response to Board Counsel's original and supplemental Motions In Limine only strengthen the argument for decisive Board action to avoid inveterate rule breaking and trial by ambush. Briefly:

- In Paragraph 1 Respondent's counsel suggests that the topic of pretrial memoranda was raised for the first time during the March 10 telephonic status conference. That is not accurate. The March 13 deadline for pretrial memoranda was set forth in the Board's February 1 and February 23 Orders. Apparently counsel for Respondent did not read those orders, just like he did not read Board Counsel's notices of the Walker and Moore depositions. Lack of diligence is no excuse for noncompliance.

- In Paragraph 2 Respondent's counsel attempts to pass off the Board's February orders concerning pretrial memoranda as mere suggestions by the Board Chair. That is not accurate either. The Board issued orders on the topic. Court Orders must be (1) read, and (2) obeyed. Otherwise they are meaningless.

- In Paragraph 3 Respondent's counsel mentions the undersigned's March 9 request to meet and confer on pretrial stipulations. He ignores the fact that the same request was made a week earlier, on March 2, with no response. See footnote 2 to Board Counsel's pretrial memorandum.

- In Paragraph 9 Respondent's counsel tries to explain away his failure to provide a witness list by referencing a list of "persons with knowledge" provided in response to an interrogatory (#5) seeking such information. Persons with knowledge are far from a proposed witness list. Plus, Interrogatory #6 called for identification of anticipated witnesses. Respondent inappropriately refused to answer then, and still does now.

- Paragraph 10 is simply false on its face; as the Board can see for itself, Respondent's proposed exhibits do *not* consist of materials that would otherwise have been privileged but for the Board's ruling concerning Attorney Moore. The overwhelming majority of the material is not subject to privilege (invoices, tax bills, bank materials, third party communications, etc.), including important material produced *for the first time*.

- Respondent's counsel's representations concerning emails being an unreliable means of communication are irrelevant and unpersuasive, but more importantly, suspect. Every time this Board has forewarned decisive action via email Respondent's counsel miraculously gets *those* emails promptly. It is the ones he doesn't want to read that coincidentally take time to arrive.

- Most importantly, Respondent's counsel does not even mention, much less explain, his failure to disclose many of the documents he now wishes to use as exhibits in his defense. To the contrary, he doubles down on his non-compliance: in Paragraph 7 he now references "four bankers boxes" of material from which he may select exhibits. Four bankers boxes?? Board counsel requested production of all documents relating to Katherine Tolaro. Why weren't those four bankers boxes produced in discovery? Respondent produced less than 300 pages of self-serving material. It is, frankly, an outrage to be learning of these boxes of material now. How is this to be remedied by Monday? What if those bankers boxes contain further evidence of code violations or other unlawful conduct? If this were a Superior Court action Board Counsel would move for terminal sanctions. In the interests of restraint Board Counsel does not so move, but at a minimum he asks the Board to hold Mr. Kane and his counsel accountable for these inexcusable discovery violations, and to shift the cost of remediation.

If this case is about anything it is about the fact that the law applies to, and must be obeyed by, judges just as much as regular citizens. There is no excuse for Respondent having litigated this case as he has.

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