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September 8, 2005

RECEIVED
SEP 09 2005
Department of Water Resources
Southern Region

Patrick D. Brown
Hutchinson & Brown, LLP
P.O. Box 207
Twin Falls, ID 83303-0207

RE: Millenkamp/Application for Transfer No. 71604

Dear Pat:

First, on a positive note, I appreciate your cooperation to complete the expert conference call as required by the Department's Order. While my desire would have been to have it completed last week, I understand that difficulties arise. I am currently working on the "report" as required by the Department and hope to have it done early tomorrow. In any event, I will provide a copy to you for your review.

Second, on a less positive note, I have received and reviewed your letter of September 1, 2005. While it has taken me a few days to decide how or if to do so, I feel that I must respond.

As I am sure you can imagine, the tone and content of your letter caused me a great deal of concern. Having my integrity called into question is something that I am not used to having occur. My initial reaction was to reply to you with the first draft of this letter. However, after some sage counsel from my partners, I decided that course of action would probably not be best. My second reaction was to not respond at all and hope that we could continue forward in a professional manner. However, after some additional time to contemplate your letter and another opportunity to take a look at my file which includes each and every letter, e-mail, fax, or other communication received from you or anyone else in this matter and telephone logs which are a precise record of all calls made to this office to confirm whether or not my recollection was in error, I now feel that I have no choice but to reply.

In your letter, you state a couple of things concerning your expert and my knowledge concerning the same. First, you indicate that I knew you had identified your expert as Richard Schowengerdt. Second, that I had known for some time that Mr. Schowengerdt was traveling and not available for the required expert conference call until August 31st. Using your words, "the record is not as stated in your letter."

As you may recall, prior to the last status conference with the Department on August 19, 2005, you had not, and still "formally" have not, disclosed your expert. Prior to that status conference, you informed me that you were choosing from four (4) possible individuals, Mr. Schowengerdt being one of those individuals. During the status conference, I specifically asked you whether you had yet determined who your expert was going to be. While you had narrowed your choices down to two, you indicated that you had not yet made a choice. Therefore, for me to know who your expert was going to be or have any knowledge of his travel plans would require communication from you sometime between the August 19th status conference and August 31st. From my review of the record, that is just not the case.

From my file it is clear that the last letter, e-mail, fax or other communication I received from you or your office prior to August 31, 2005, was on August 19, 2005, moments prior to the status conference with the Department, wherein you provided me with your *Objection to Application Amendment, Motion to Vacate Hearing, Motion to Compel Discovery and Alternative Motion in Limine*; and *Brief Supporting Motion to Compel and Motion in Limine*. Prior to that, the only correspondence received from you of any substance was a copy of a letter from you to Roy Prescott back in July. No mention was made in either of those documents, or any other document or correspondence for that matter, of your expert. This is despite my letters of August 29th, August 31st and September 1st and phone calls made by my secretary to your office prior to the 31st requesting the same. Additionally, my phone logs evidence the fact that your last call to this office prior to August 31st was before the August 19th status conference. As a result, the record clearly establishes the fact that not only did I not know that Mr. Schowengerdt was your expert, but that I also did not know that he was unavailable until the 31st for the expert conference call.

I also take exception to the allegations in your letter indicating that Dr. Brockway was unavailable for the conference call, that you called my office on two (2) occasions to set up the conference call on the 31st to no avail and that the afternoon was not held open by me for the conference call as promised. While these statements in a very loose sense reflect a portion of the events as they transpired, they do not reflect the entire record.

My office call logs indicate on the morning of the 31st, you called me at 9:55 a.m. and left a message. I returned that call shortly thereafter. In your letter, you seem to indicate that the conference call did not take place because Dr. Brockway was unavailable. That is inaccurate. Instead, during our telephone conversation that morning, you indicated that Mr. Schowengerdt was still in route to his home in Challis and therefore unavailable until later. You also indicated that you would let me know when he reached his home and when he would be available for the conference call. However, as evidenced from my phone logs, I did not hear back from you until 3:20 p.m. that afternoon. As for your attempts to contact me on two (2) occasions to set up the conference call, the 3:20 p.m. call is the only phone call from you reflected in my phone log after our initial discussion that morning. Finally, as for your allegation that I did not hold the afternoon open and was with clients, I need to set the record straight there as well. If to hold the afternoon open you expected me to cancel all of my appointments for the day and wait by the phone for your call, then I guess your

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statement would be accurate. However, in light of the fact that you did not respond to requests by letter and phone calls to your secretary to set up the conference call until mid-morning of August 31st and waited almost 5½ hours after our initial conversation to attempt to initiate the conference call, I do not feel that doing so would have been a good use of my time.

Now let's discuss the events that occurred after your 3:20 p.m. call to me. While it is true that I was in a conference with clients when you called (which lasted about 45 minutes), when I learned that you had called I immediately had Jayna attempt to contact you at your office to set up the conference call. During that call, Jayna was informed that you were not in the office. When asked if you would be returning, she was informed by your secretary that you had been in "seclusion" all day and she was unsure. When asked if she had any idea regarding the conference call, she was informed by your secretary that she did not. Thereafter, my next contact from you was a telephone the next day and your letter of September 1st.

Bottom line, if you are going to accuse me of misleading or misstating the record, I would suggest you have the facts to back it up. While I certainly hope that we are able to maintain a professional relationship throughout the course of this matter, I will not stand idly by while you call into question my integrity.

Yours truly,

A handwritten signature in black ink, appearing to read "TJ Stover", written in a cursive, stylized font.

TIMOTHY J. STOVER

TJS/jl

cc: Lee Halper
Gary Spackman
Allen Merritt, IDWR
Client