



Lisa Borodkin <lborodkin@gmail.com>

AEI et al. v. Xcentric (C.D. Cal. 10-cv-1360) Draft Rule 26f Report

David Gingras <david@ripoffreport.com>

Sat, May 8, 2010 at 11:17 AM

Reply-To: david@ripoffreport.com

To: Lisa Borodkin <lborodkin@gmail.com>

Cc: Lisa Borodkin <lisa_borodkin@post.harvard.edu>, Maria Crimi Speth <mcs@jaburgwilk.com>, Daniel Blackert <blackertesq@yahoo.com>

Lisa,

My email to you last night assumed that you had spoken with Dan about the day's events. I am sorry if that assumption was incorrect. I did not mean to be deliberately vague. Unfortunately, I do not have time this weekend to explain everything that I need to say but I will do so on Monday.

However, to summarize, here's what happened on Friday. As you know, I spent several hours deposing Mr. Mobrez and asking him to explain the details of his claims against Xcentric and Mr. Magedson. We spent a significant amount of time covering the claims in his Complaint, his March 29, 2010 affidavit, and his May 3, 2010 declaration. As you know, in both the March 29 affidavit and the May 3 declaration, Mr. Mobrez testified that in a series of telephone calls Mr. Magedson demanded \$5,000 from him, promised that this payment would result in negative information being changed into positive, bragged about being at the top of Google, bragged about being immune under the law, explained that it was "best to just go with the [CAP] program" and so forth. In his deposition, Mr. Mobrez again reaffirmed that all of these allegations were completely true. Mr. Mobrez also testified that his wife's declaration was truthful insofar as she claims to have overheard the same statements from Mr. Magedson on the phone.

After taking that testimony, I revealed to Mr. Mobrez that all of his calls with Mr. Magedson were automatically recorded by Xcentric's phone system. Before the actual recordings were played, I offered Mr. Mobrez an opportunity to recant his testimony. As you may know, when a witness commits perjury in a court proceeding in violation of 18 U.S.C. § 1623(a), the law gives them a single chance to save themselves and "get out of jail free". As explained in 18 U.S.C. § 1623(d), as long as neither of two contingencies have occurred first, a witness who has lied has one opportunity to recant and admit that his prior testimony is false. Doing so is a bar to prosecution, so it gives lying witnesses a powerful incentive to save themselves by doing the right thing. Of course, that opportunity expires immediately upon the occurrence of either of the two events set forth in the statute – 1.) the lies have substantially affected the proceeding, or 2.) it has become manifest that the lies have been or are about to be exposed.

Mr. Mobrez declined to recant so I immediately played all of the recordings into the record. A CD containing these recordings was made an exhibit to the deposition and I handed a copy to Dan as well. In case you have not had a chance to review them, copies of all the recordings are attached along with a table that matches them with the telephone bills supplied by your client. If you have any questions about what these tables mean, I will be happy to explain that to you.

In any event, the recordings show beyond any doubt that your clients have committed perjury in this case (three

times in the case of Mr. Mobrez; once for Ms. Llaneras). In sum, the recordings prove that your clients manufactured each and every material aspect of their claims. These were not simple misunderstandings or miscommunications; they were pure lies manufactured from whole cloth for the obvious purpose of harming Xcentric and committing a fraud upon the court. Beyond this and based on past experience, I am seriously concerned that the public availability of your clients' false declarations on PACER may be used and republished by Xcentric's adversaries to cause substantial additional harm to Mr. Magedson and the Ripoff Report. I assure you that Xcentric intends to vigorously pursue your clients for any and all damages it has already incurred and will incur as a result of their criminal actions.

Based on this, at the end of Mr. Mobrez's deposition, I informed Dan that I was suspending the deposition of Ms. Llaneras in order to allow Dan to investigate his ethical obligations. Since I presume that Dan was an innocent victim of your clients' lies, I did not want to put him in the position of having to defend Ms. Llaneras in a deposition where doing so would clearly violate the California Rules of Professional Conduct and potentially subject Dan to serious personal and/or professional consequences. Assuming that Dan had no knowledge of your clients' actions, I wanted to give him the same chance that Mr. Mobrez foolishly declined – a chance to do the right thing.

These circumstances were the reason for my remarks in last night's email suggesting that you immediately contact the State Bar of California for guidance as to your ethical obligations knowing, as you now do, that your clients have committed perjury. Because I knew that your clients were lying, and because I was not fully aware of my responsibility under California law in this situation (under Arizona's ethical rules, it would be mandatory for me to report this matter to the state bar) I have already contacted the California bar and have received their input which I will explain to you in my letter on Monday along with my view of Xcentric's claims against your clients, among other things.

In closing, in the absence of some overwhelming justification of which I am not currently aware, because continuing with the representation of your clients in this case may expose you and Dan to serious consequences, I believe that we should agree to immediately stay this case in order to preserve the status quo until such time as you and Dan have conferred with your clients, informed them of their rights and obligations, determined your own obligations, and ascertained what your position is with respect to the continuation of this case. Since I know the Rule 26(f) report is due to be filed on Monday, I think we should probably discuss what, if anything, we should do to bring these events to the court's attention. The problem, of course, is that unless and until you and Dan withdraw as counsel, you still have certain continuing duties to your clients which now directly conflict with your own. As such, other than immediately moving to withdraw, I do not believe that you can take any further steps to advance this case (including filing the Rule 26(f) report or any other pleadings) without running the risk of serious ethical consequences.

Again, I will provide you with a letter on Monday setting forth my position in more detail.

David Gingras, Esq.

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From: Lisa Borodkin [mailto:lborodkin@gmail.com]

Sent: Friday, May 07, 2010 11:41 PM

To: <david@ripoffreport.com>

Cc: Lisa Borodkin; Maria Crimi Speth; Daniel Blackert

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8 attachments



Call 5 - May 5, 2009 - 1.10 PM.wma
96K



Call 6 - May 9, 2009 - 1.38 PM.wma
248K



Call 7 - May 12, 2009 - 3.05 PM.wma
2213K



Call 1 - April 27, 2009 - 3.25 PM.wma
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Call 2 - No Recording For This Call.txt
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Call 3 - April 27, 2009 - 3.32 PM.wma
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Call 4 - May 5, 2009 - 11.33 AM.wma
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