

Ben Ratliff

From: Phillip R. McMurray [pmcmurray@linnemanlaw.com]
Sent: Wednesday, December 03, 2008 9:58 AM
To: Ben Ratliff
Subject: Forte v. Jones

Good morning Ben, I hope you had a good Thanksgiving weekend. I am sure that by now you have received a copy of Gene Forte's letter that he sent to Judge Kirahara dated 12/1/08. I wanted to see if you had any plans on responding to this letter...

I have some concerns with the letter, and was contemplating some sort of short response to make sure the facts of our case in particular are clear w/ Judge Kirahara. First, he mentions that he has never been sanctioned by the courts. There are at least 2 instances of sanctions against him, that I know of - the first involved a case in Monterey where he was sanctioned \$700 for not cooperating/evading/delaying discovery.

The second case was another Monterey case, Forte v. Crabb, where terminating sanctions were imposed because he 'engaged in an extended, purposeful scheme to conceal and lie about evidence he had illegally obtained in order to benefit his case and put the defendants at a disadvantage at trial'. I apologize for not having much information on these 2 cases, but I believe I can get it if needed.

He also says that there were 'irregularities' w/ the paperwork that was filed. There were no irregularities - you will recall that I filed my client's request for protective order and set the hearing for Nov. 6 for court and party convenience. When he objected, I said that was file, and agreed to postpone the hearing on that issue, which is what the court did.

Finally, I am not sure what he is talking about at the bottom of page 2, where he discusses the denial of my request for judicial notice....that request had nothing to do w/ vexatious litigants - it referred simply to the length of Mr. Sousa's deposition in support of my motion for protective order. The \$2,000 sanction against him related to his motion to compel and my client's response, not the protective order.

I apologize for the lengthy e-mail, and in a normal case, I would have simply passed this letter into the file. But I think this is an instance where he is trying to mislead the courts. [It doesn't help that he takes a few 'pot shots' at me in the letter, for some reason.] Please feel free to call me if you would like to discuss, at your convenience. I would like to know your thoughts though.

Very truly,

Phillip R. McMurray
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