

Board Update on General Counsel Litigation
March 4, 2020

Trial of the remaining claims in the General Counsel litigation is currently scheduled for March 9, 2020. The claims pertain to the Board's right to retain separate counsel during the pendency of this dispute over the Superintendent's appointment of a General Counsel without the co-approval of the Board, and Superintendent Mijares' refusal to allow payments to be processed for the Board-approved invoices for the services that counsel has rendered to the Board.

The court heard motions in limine on February 24, 2020. Originally, Dr. Mijares filed eight such motions seeking to exclude certain evidence. The Board filed only three. After discussion between the parties, Dr. Mijares agreed to withdraw seven of his motions; the Board agreed to withdraw two.

The motions in limine that remained - one from the Board and one from Dr. Mijares – addressed the admissibility of purported expert testimony. Dr. Mijares originally designated a lawyer as an expert to testify on legal conclusions and opinions, and the Board in its motion argued that such subjects were within the province of the court and not proper for expert testimony. Nevertheless, because Dr. Mijares had designated an expert, the Board had to designate a rebuttal expert, and both experts had to be deposed. Similarly, the Board had to fully brief and oppose all eight of Dr. Mijares' motions in limine, even though he ultimately withdrew seven of them. Dr. Mijares' expert had previously been excluded by the court in connection with the Board's preliminary injunction motion that the court granted.

At the February 24 hearing on the remaining motions in limine, the Court agreed with the Board that expert opinions were not appropriate, and ruled without prejudice to exclude the designated experts from the trial. Since then, the parties have been engaged in additional preparation for trial.

The Board believes strongly in its case, its legal position, and that its legal governance rights and authority should be respected and recognized. Nonetheless, the Board unanimously remains amenable to reasonable compromise toward an informal resolution of the dispute. However, the Superintendent has not moved from his most recent position in settlement for complete dismissal of all the Board's claims.