

Board Update on General Counsel Litigation
January 8, 2020 Board Agenda item

On October 4, 2019, Mijares filed a petition for a writ of mandate in the court of appeal, seeking to overturn the trial court's preliminary injunction order that Mijares be restrained from refusing to remit payment to the Board's special counsel, Greg Rolen. On October 9, 2019, the Court of Appeal denied the writ petition. Less than a month later, on October 25, 2019, Mijares filed a notice of appeal of the preliminary injunction order, on the same grounds as the previously denied writ petition, again seeking to overturn the trial court's decision that Greg Rolen should be paid for his services rendered while the dispute between the Board and the Superintendent over the appointment of General Counsel was pending. Prior to these two requests for appellate review, Mijares had required the Board to proceed with two *ex parte* hearings to confirm the trial court's preliminary injunction order.

Mijares then, through a second retained law firm in the case, filed a motion on November 6, 2019 in the trial Court for an order (1) confirming an automatic stay of the Court's preliminary injunction order, and (2) issuing a discretionary stay of the entire action pending appeal. This despite the fact that the proper tribunal to seek a decision on a stay of the injunction order was the Court of Appeal. The stay sought by Mijares would effectively deny the Board the benefit of its retained legal counsel, and, ultimately, to would suspend all legal proceedings in the trial court for one or two years or more, despite the fact that trial in the case had on schedule for many months to commence on January 21, 2020.

During the December 12, 2019, hearing on Mijares' motion to stay, which the trial court ultimately denied, Mijares' counsel expressly acknowledged that the intent of Mijares' motion was to leverage over the Board for settlement purposes and to "bring the Board into control."

Following the trial court's denial of Mijares' motion for a stay, the Board's legal counsel notified Mijares' counsel of its intent to file a motion to hold Mijares in contempt of court if he did not comply with the trial court's preliminary injunction order. In response, Mijares' counsel stated that they would take "immediate steps" to apply "quickly" to the court of appeal for such a stay. However, as of the date of this notification, the Board has not received notification of any application being filed, and Mijares has continued to violate the trial court's preliminary injunction order by blocking the Department's payment of Mr. Rolen's Board-approved outstanding invoices.

On December 30, 2019, the trial court heard the parties' cross motions for summary disposition. The trial court granted summary adjudication in favor of Mijares on the issue of the appointment of General Counsel. The court ruled against Mijares on his motion regarding the payment of Mr. Rolen's fees for services to the Board. This latter issue remains undecided, and it is currently scheduled for trial on January 21, 2020. The Board disagrees with the trial court's ruling and interpretation of law regarding the General Counsel appointment issue and intends to obtain review and determination of the issue on appeal.

In an effort to reduce the cost and delay of litigation, the Executive Committee of the Board made a compromise proposal to Mijares on January 3, 2020. The proposal would facilitate the parties getting to a final determination of the General Counsel issue on appeal while preserving their rights and obviating the need for a trial. The Board continues to believe and desire that this serious matter involving issues of shared power and collaborative governance can be resolved through equitable and reasonable compromise.