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Ridgway, CO 81432

Tom Bakos, FSA, MAAA

July 20, 2009

Actuarial Board for Counseling and Discipline
1850 M Street, NW
Suite 300
Washington, DC 20036-5805

RE: Request that the ABCD initiate an investigation into apparent material violations of the Code

Dear ABCD:

This letter is intended to request that the ABCD conduct an investigation into the following matters involving David G. Hartman and, potentially, other members subject to the Code of Professional Conduct. In particular, Robert A. Anker and, by association, other former Academy presidents who signed the 7/9/2009 email referenced in the following may be involved.

First Instance

This involves an email authored by David Hartman and distributed by Robert A. Anker on 7/9/2009 to the Board of the American Academy of Actuaries. Therefore, Anker may also need to be included in an ABCD investigation. This email, essentially, accuses Bruce Schobel of defamation and being a convicted felon and asserts that he is, therefore, unfit to serve as a presidential officer of the Academy. See text of this email in ***Exhibit 1***.

Second Instance

Hartman has also filed a complaint with the ABCD regarding what he believes is a Precept 1 Code violation by Bruce Schobel stating that Bruce Schobel defamed Sarah Sanford, former Executive Director of the Society of Actuaries.

These actions by Hartman and Anker would seem to be in violation of the Code for the following reasons:

- In the *First Instance*, with respect to their distribution of information on a "conviction" associated with Bruce Schobel, Hartman and Anker appear to have knowingly violated New Jersey State Law. In addition, Hartman's and Anker's attribution of a "conviction" to Bruce Schobel is a knowingly false statement. (By association, the other signatories to the email may also be guilty of a Code violation.)

Voice: (970) 626-3049 + Fax: (970) 626-3048 + Cell: (970) 275-9386 + tbakos@BakosEnterprises.com
http://www.BakosEnterprises.com

- In the *Second Instance*, Hartman seems to have made a frivolous claim of no merit. Hartman assumes as fact that defamation of character actually occurred – a result that neither the SoA nor Bruce Schobel admit to despite the Arbitrators' Award and which was, technically, not the conclusion reached by the Arbitrators' Award document.

- In both instances, Hartman and Anker (and by association the other signatories) appear to have made false statements to the Academy Board about Bruce Schobel.

Hartman's and Anker's intention in sending the 7/9/2009 email was clearly directed at the objective of having Bruce Schobel removed from his duly elected office of President-Elect of the Academy. Hartman's complaint to the ABCD is clearly linked to that same objective as it references the same assumed "defamation" and characterizes that as a Precept 1 violation. In addition, the first paragraph of the 7/9/2009 email sent by Hartman contains a reference to "a complaint pending against Mr. Schobel" which, presumably, is the complaint Hartman himself filed dated 6/12/2009. If so, this reference further enforces the relationship between the complaint and the political desire to have Bruce removed from office.

Given the timing of complaint filed by Hartman and the 7/9/2009 email, it may be presumptive for Hartman and Anker to describe or characterize his complaint as "pending" in the 7/9/2009 email and request that the Academy Board "suspend the privileges of Bruce D. Schobel's acting as President-Elect" merely because Hartman filed a complaint. To do so would, clearly, strip Schobel of all due process merely because Hartman had "filed" a complaint.

It is important to recognize (and Hartman and Anker, apparently, did not) that there are procedural steps in the ABCD process which may result in a determination that the complaint does not involve a material violation of the Code or merely appears to be a dispute other than a material violation of the Code in which cases the matter would be closed. Further, even if the ABCD decided to investigate the complaint that fact should not be used to condemn someone since the result of the investigation may be that no violation had occurred.

In addition, Hartman ought to have recognized that the ABCD only recommends discipline, it does not implement discipline. Although Hartman may not have been aware of it, the SoA Board had already fully and carefully considered the events Hartman bases his complaint on and found no reason to take any action.

Even though the ABCD requests confidentiality in these matters, it does not require it. However, it is reasonable for one to question Hartman's motives in filing his complaint against Bruce Schobel and then referencing it in the 7/9/2009 email and his earlier draft.

Overall Impression

Although only an impression, it appears to me that the initiation of Hartman's complaint is driven more by political differences and a political objective than by a reasonable belief that the Code has actually been violated.

As a member of the AAA ***Council on Professionalism*** and Chair of the ***Committee on Professional Responsibility***, I have a great appreciation for the Code and Standards of Practice and the role they play in our profession. I am deeply disturbed by the cavalier way in which some of our leaders seem to be using the ABCD to, apparently, move their political agendas.

Clearly, members of the actuarial profession have a right to disagree and press their points of view but to question an opponent's professionalism as a tactic in that process damages the profession and should be unacceptable. I hope that the ABCD will pay close attention to this new tactic, which is a clear abuse of our Code of Professional Conduct, and take appropriate action to stop it immediately.

Circumstances Underlying Complaint

This matter originates from the apparent recent discovery by Hartman, Anker, and perhaps others of the Society of Actuaries (SoA) settlement (dated 12/3/2008) in its dispute with Sarah Sanford, the former Executive Director of the SoA. I am an SoA Board member and participated in discussions in SoA Board Executive sessions regarding this settlement. I believe the situation can be best summarized as follows:

> The SoA was no longer satisfied with Sarah Sanford as Executive Director. We wanted her gone. We succeeded in this objective. It did, however, cost us more than we either expected or thought fair. Although we strongly disagree with the Arbitrators' Award and all of the conclusions the arbitrators reached, we did agree to be bound by it and, so, settled the matter as indicated in the Arbitrators' Award document.

Hartman and Anker drew out two items referenced in the arbitration agreement upon which to base their claims:

1. The SoA defended itself and Bruce Schobel, its President, against a charge of defamation of character made by Sarah Sanford. The Arbitrators ruled partially in favor of Sanford. Hartman took this to mean that Bruce Schobel had defamed Sarah Sanford and thereby violated Precept 1.

   The following should be noted:

   - Hartman and Anker both failed to recognize that the SoA was also accused of defamation. Failing to note this unfairly and incorrectly assigns all blame for a presumed defamation to one individual and ignores the fact that it was in his service to the SoA that Bruce found himself accused of defamation in the first place.
   - Hartman also failed, apparently, to consider or explore the impact or import of a binding arbitration finding. A binding arbitration process was used because of contractual provisions in Sanford's contract. The fact that the Arbitrators' Award was not appealed was, based on my participation on the SoA Board discussion,

because it could not be; therefore, lack of an appeal cannot be interpreted as an admission of guilt.

- The SoA vigorously defended itself and Bruce against Sanford's claims, and I believe it agrees and asserts to this day that defamation did not occur.
- The fact that the arbitrators ruled in favor of Sanford does not establish that she was defamed. It is merely an indication that the truth of the statements made by Bruce on behalf of the SoA could not be proven to the satisfaction of the arbitrators.
- It should be very clear to anyone who explored the arbitration process and, in fact, Hartman, Anker, and all former Academy presidents were informed in advance, that "Arbitration Awards have no standing as judicial opinions, decisions, or precedents". [See John Parks' 7/1/09 letter to the Past Presidents of the Academy, **Exhibit 3**.]

It is highly inappropriate for any member of the SoA, especially a leader of the actuarial profession, to admit or assume that defamation occurred based solely on the arbitrators' report with no knowledge or understanding of the arguments made by the defense. Based on my knowledge, as an SoA Board member, the attorneys representing the SoA and Bruce Schobel in this matter made strong and persuasive arguments in defense of these charges and fully expected to prevail. They, as well as the SoA's insurer, were surprised by the Arbitrators' Award.

2. In the 7/9/2009 email sent to the Academy Board members, Hartman and Anker disclose a prior conviction in New Jersey which was revealed in the Arbitrators' Award. My understanding, and the obvious understanding of Hartman, Anker, and, by association, the other former Academy presidents who signed the 7/9/2009 email, is that this conviction has been expunged from the records.

   The meaning of "expungement" under NJ Law is explained below (underline added):

   > ***2C:52-27. Effect of expungement***
   > Unless otherwise provided by law, if an order of expungement is granted, the arrest, conviction and any proceedings related thereto shall be deemed not to have occurred, and the petitioner may answer any questions relating to their occurrence accordingly, …

   It is clear from this that "expungement" **erases** any conviction to which it is applied **as if the conviction never occurred**. Also, note that this NJ Law makes it clear that the correct answer to a question: "Have you been convicted of a crime?" is "No."

   In addition, "expungement" grants additional protective rights as indicated below:

> ***2C:52-30. Disclosure of expungement order***
>
> Except as otherwise provided in this chapter, any person who reveals to another the existence of an arrest, conviction or related legal proceeding with knowledge that the records and information pertaining thereto have been expunged or sealed is a disorderly person. Notwithstanding the provisions of section 2C:43-3, the maximum fine which can be imposed for violation of this section is $200.00.

Further, it is my opinion that this expunged conviction became a part of the Arbitrators' Award document because Sarah Sanford, apparently, improperly and illegally revealed it. There is some opinion and belief that Sanford attempted to use her knowledge of this information as a bargaining chip in resolving her differences with the SoA.

It should also be understood that Bruce Schobel advised Hartman prior to his release of the email sent by Anker that further distribution of information regarding an expunged record could be a violation of New Jersey Law. In fact, Bruce upon request by Hartman provided on 6/26/2009 (well in advance of the 7/9/2009 email) a reference to the NJ Code section 2C:52-30 reproduced above. See text of this email correspondence in ***Exhibit 2***.

Hartman, a resident of New Jersey, was the original drafter of the 7/9/2009 email ultimately sent by Anker (not a New Jersey resident) even though Hartman did apparently sign it. It is clear that Hartman is the drafter of the email because a nearly identical early draft was sent on 6/25/2009 to Bruce Schobel in an apparent attempt to force Schobel to step down as President-Elect of the Academy. It would be reasonable, if the ABCD decides to investigate this matter, for the ABCD to inquire of Hartman why Anker distributed the 7/9/2009 email Hartman drafted rather than himself and if the applicability of New Jersey Law played a role in that decision.

Details of Alleged Violation

Precept 1 – Professional Integrity (& Preamble): This precept requires honesty, integrity, and competence, and compliance with the Law.

Integrity

- The Code Preamble requires that (underline added):

  > *An Actuary must be familiar with, and keep current with, not only the Code, but also applicable Law and rules of professional conduct for the jurisdictions in which the Actuary renders Actuarial Services.*

- Annotation 1-2 requires that (underline added):

An Actuary shall not provide Actuarial Services for any Principal if the Actuary has reason to believe that such services may be used to violate or evade the Law or in a manner that would be detrimental to the reputation of the actuarial profession.

- Hartman was less than honest and acted with little integrity when he violated New Jersey Law by further distributing information concerning a conviction which had been expunged. He did this with full knowledge and understanding that doing so could be considered a violation of New Jersey Law.

- The NJ Law is clear and could not have been misunderstood. Hartman may have been willing to risk or accept the minor fine associated with such disclosure. However, that does not excuse him from acting with honesty or "to adhere to the high standards of conduct" as required in the Code Preamble.

- In addition, the Code Preamble is quite clear: "Laws may also impose obligations upon an Actuary. Where requirements of Law conflict with the Code, the requirements of Law shall take precedence." Therefore, in violating the Law, Hartman appears to have violated the Code.

Skill and Care

Precept 1 also requires "skill and care" (annotation 1-1). There are several apparently incorrect assumptions or assertions drawn from the Arbitrators' Award document and repeated in the 7/9/2009 email. In particular:

Arbitrators' Award

The 7/9/2009 email claims:

A panel of impartial arbitrators of the American Arbitration Association found that Mr. Schobel had defamed the character of Sarah Sanford, formerly the Executive Director of the Society of Actuaries (SOA), resulting in an award of over $2,000,000.

- The arbitrators did not find that Bruce defamed Sanford. They merely ruled that the SoA had not proven or shown that Bruce's statements were true. The SoA has not conceded as a result of the Arbitrators' Award that it or Bruce actually did defame Sanford.

- Additionally, Hartman mischaracterizes the award of the arbitrators on the defamation charge by implying the entire award was for defamation. The award amount for defamation is clearly detailed in the Arbitrators' Award document and is not $2,000,000. Depending on how one classifies the award amounts, one could reasonable conclude that less than half the $2,000,000 total settlement (as quoted by Hartman) was due to defamation.

- The Hartman email asserts that the Arbitrators' Award "is a public document." This may be technically true but ignores the fact that, from a practical point of view, it is highly unlikely that anyone could actually find the document without already having a copy. Practically, one would need to know where to look and have a case number. A statement, therefore, that the document is public is disingenuous and is, probably, made only to cover or justify in some way the disclosure of expunged records prohibited by NJ Law.

- Hartman, Anker, and the other former presidents of the Academy who signed the 7/9/2009 email had available to them a letter from John Parks, current president of the Academy (and also, Bill Bluhm and Steve Lehmann, former presidents of the Academy), dated 7/1/2009. See attached ***Exhibit 3***. This letter clearly points out the limitations of an arbitration award and what conclusions may be drawn from it. The letter also indicates that the Award of Arbitration document had, as of 7/1/09, been impossible, though attempts were made, to find in any public record – calling into question the Hartman/Anker assertion that the document is publicly available. Hartman ignored this information in producing the 7/9/2009 email and also ignored it when filing his complaint to the ABCD.

It would be a reasonable question, if the ABCD chooses to investigate this matter, to inquire of Hartman, Anker, *et al* exactly what was the source of their copy of the 12/3/2008 Award of the Arbitrators document that was attached to their 7/9/2009 email and Hartman's 6/12/2009 complaint to the ABCD.

Assertions of a Conviction

The 7/9/2009 email contains a number of references to or assertions that Bruce Schobel has been convicted of a felony. For example:

In addition, pages 9 and 10 of the Award contains a section about a counter-claim regarding "Defamation Claims" which concludes that statements "... that Schobel was a convicted felon were substantially true, and therefore were not defamatory."

Mr. Schobel's conviction of a crime involving a prison sentence also raises a question of personal conduct.

- Hartman and Anker, in making these assertions, entirely misunderstand what an expungement is. As previously noted, an "expungement" under NJ Law means: "the arrest, conviction and any proceedings related thereto shall be deemed not to have occurred, and the petitioner may answer any questions relating to their occurrence accordingly …".

- It is, therefore, incorrect, and a distinct lack of skill and care to not recognize and understand that an "expungement" erases any prior conviction and it is deemed to have not occurred. The words could not be clearer. Bruce Schobel, **in fact**, is not a

convicted felon and to assert otherwise, as Hartman and Anker have clearly done, is, itself, a violation of Precept 1. The only correct answer to the question: "Is Bruce Schobel a convicted felon?" is "No."

- The Arbitrators' Award assertion that "Schobel was a convicted felon" is, simply, not true. And, in any event, as noted in John Parks' 7/1/2009 letter, the fact that this is a conclusion reached by the arbitrators in the SoA case is irrelevant with respect to any other matter. Not knowing these facts shows gross incompetence regarding an understanding of applicable law particularly since Hartman was very specifically informed, with reference to reasonable authority, on all of these issues prior to the distribution of the 7/9/2009 email.

- Clearly, Bruce still did the thing or things that gave rise to the original, now expunged, conviction. I don't know what that thing or things were nor, I assume, do Hartman, Anker, or the other former Academy presidents who signed the 7/9/2009 email. They don't even have, I imagine, knowledge or understanding of why the record may have been expunged. They are, in effect, basing their recommendation in the 7/9/2009 email on a false premise and are misleading the Academy Board to whom the email was sent.

It is clearly apparent that Hartman, Anker, *et al* violated Precept 1's skill and care obligation.

On the Expungement

The 7/9/2009 email sent by Hartman and Anker makes the following statement:

> *The Award language implies that the New Jersey record has been expunged, and that Mr. Schobel claims it should not be considered. Expungement is not exoneration. It does not change historical facts nor does it render them irrelevant.*

- The Award language does not just "imply" that the records had been expunged. The Award language clearly accepts the fact that the record was expunged by proper order of a court in New Jersey. The arbitrators have merely formed an opinion, perhaps incorrect, that NJ Law does not apply to Sanford as Hartman has apparently concluded that it does not apply to Anker -- though he was apparently concerned that it applied to himself.

- Expungement clearly does have an effect. Its effect is to erase the original conviction as if it had never occurred. It is, perhaps, too smug to argue that expungement is not exoneration (meaning: pardon, clemency, absolution) when in most respects it is exactly that. The Arbitrators were simply wrong in their assessment of what expungement means, and Hartman, Anker, *et al* in unquestioningly accepting the arbitrators' assessment were incompetent in reporting this to the Academy Board in the 7/9/2009 email. A reasonable, well

informed, skillful person should and would question this assertion knowing the facts as Hartman, Anker, *et al* did per John Parks' 7/1/2009 email.

- Also, the very nature of an expungement, as I believe any reasonably well informed, skillful person would agree, does in fact render the historical event that resulted in the original conviction irrelevant. If the events giving rise to the expunged conviction were intended to have relevance, then the conviction would have been left to stand, and laws wouldn't have been enacted to make disclosure of an expunged conviction a crime.

It is clearly apparent that Hartman, Anker, *et al* violated Precept 1's integrity requirement and skill and care obligation.

Precept 2 (Qualifications): Hartman and Anker have, apparently, made some bad assumptions regarding the Law in their unqualified assertion that Bruce has violated Precept 1 by defaming Sarah Sanford and that Bruce is a convicted felon. They have taken a position and expressed an actuarial opinion based on a review and incorrect analysis of material they were not qualified to interpret. They, apparently, ignored the attempts that were made to enlighten them. As a result (apparently):

- Hartman ***falsely accused*** Bruce Schobel of defamation in his complaint to the ABCD.
- Hartman, Anker, *et al* ***falsely accused*** Bruce of defamation in their 7/9/2009 email to the Academy Board.
- Hartman, Anker, *et al* ***falsely accused*** Bruce of being a convicted felon in their 7/9/2009 email to the Academy Board.

Precept 4 (Communications and Disclosure): The 7/9/2009 email drafted by Hartman and sent by Anker on behalf of the former Academy presidents who signed it makes incorrect or incomplete statements, as noted above, violating a principle stated in Precept 4 requiring that an actuarial communication be "clear and appropriate to the circumstances and its intended audience." In their 7/9/2009 email to the Academy Board, Hartman, Anker, *et al* are asking the Academy Board to act on the false information they have provided.

Conclusion

Whether or not they were acting with appropriate forethought and reflection, the professional actions of Hartman, Anker, and the other former Academy presidents listed as signatories to the 7/9/2009 email should be unacceptable in the actuarial profession and, I believe, under our Code.

If they were acting for an actuarial consulting firm and provided a report and opinion as flawed as their email to the Academy Board and recommended action based on that opinion, they would be guilty of all of the violations outlined above. Their lack of skill and care is particularly unacceptable because, for the most part, their errors were pointed out in advance in a process

very similar to peer review. That is, John Parks and two other former Academy presidents apparently, in consultation with Academy General Counsel, did the necessary research and specifically provided it to Hartman and the others – which they seem to have ignored.

Sincerely;

Tom Bakos, FSA, MAAA

EXHIBITS

Exhibit 1: Text of 7/9/2009 E-mail

From: Robert A. Anker [mailto:bobanker@earthlink.net]

Sent: Thu 7/9/2009 10:28 AM

To: John P Parks; Bruce Schobel; Bluhm, Bill; Sweeny, Andrea; Josephson, Gary; Bingham, Al; Campbell, Thomas; Terry, Tom; Riley, Kathleen; Rech, Jim; Bell, Rowen; Bruning, Larry; Emma, Chuck; Herget, Thomas; Knapp, Darrell; Olsen, Cande; Panighetti, Arthur; Rosen, Steve; Shea, David; Steiner, Ken; Lehmann, Steve; Dobrow, Stephen; Thomas Finnegan; Kollar, John; Hayne, Roger; Weiss, Lance; Sher, Larry; OAK cecil OFFICE; Mike McLaughlin (Deloitte)

Cc: Bob Anker; Tom Bowles; Ed Boynton; Joe Brownlee; Chuck Bryan; Norm Crowder; John Harding; Stan Hughey; Allan Kaufman; Steve Kern; Barbara Lautzenheiser; Jim MacGinnitie; Bart Munson; Mavis Walters; Bob Wilcox; P. Adger Williams; Bob Winters; Larry Zimpleman; Dave Hartman; downs@actuary.org

Subject:

Members of the Board of Directors
American Academy of Actuaries
1850 M Street NW, Suite 300
Washington, DC 20036

Dear American Academy of Actuaries Board Members,

We, the undersigned 19 past presidents of the American Academy of Actuaries, are writing to you, the American Academy of Actuaries Board of Directors (AAA Board), to request that you suspend the privileges of Bruce D. Schobel's acting as President-Elect and becoming President in October 2009 and Past President in 2010, of the American Academy of Actuaries (AAA) or referencing or utilizing such designations pending the investigation of the complaint pending against Mr. Schobel and action by the ABCD, and if required, a subsequent action by the AAA Board.

The Vision Statement of the AAA includes as the first Vision for Core Functional Areas a "Professional Vision -- The profession's publics will acknowledge and respect the exceptionally high level of integrity and competence demonstrated by actuaries." Our request for action is based on the obvious requirement that the top elected officials of the organization should be an exemplar of this vision to preserve the public trust.

A panel of impartial arbitrators of the American Arbitration Association found that Mr. Schobel had defamed the character of Sarah Sanford, formerly the Executive Director of the Society of Actuaries (SOA), resulting in an award of over $2,000,000. The American Arbitration Association Award of Arbitrators (Award) was not appealed and the award has been paid. The Award is the document that is attached dated December 3, 2008. This is a public document. Please pay particular attention to pages 3 through 6, especially the statement at the bottom of page 4 which says "nothing in the record proved that the 'facts' expressed by Schobel were true."

In addition, pages 9 and 10 of the Award contains a section about a counter-claim regarding "Defamation Claims" which concludes that statements "... that Schobel was a convicted felon were substantially true, and therefore were not defamatory."

The integrity referenced in the Vision Statement encompasses two kinds of conduct: professional conduct and personal conduct. The questions about professional conduct raised by the Award are sufficient to require temporary suspension of Mr. Schobel's current office as President-Elect and his succession to the offices of President and Past President of the AAA. Determining whether further action, such as removing Mr. Schobel from office, may be appropriate, but should await the outcome of the ABCD process the profession has had in place since 1992.

Mr. Schobel's conviction of a crime involving a prison sentence also raises a question of personal conduct. The ABCD may or may not have a reason to pursue that question, but we believe the AAA Board does. The Award language implies that the New Jersey record has been expunged, and that Mr. Schobel claims it should not be considered. Expungement is not exoneration. It does not change historical facts nor does it render them irrelevant. The Award rejects Mr. Schobel's claim on the basis that the New Jersey law on expungement is not binding outside the state. Again, the Award concludes that statements "... that Schobel was a convicted felon were substantially true...." We question the propriety of a convicted felon serving as an officer of the AAA.

The duty and authority conferred on the AAA Board by Article III Section 5 of the Bylaws includes: "... the right, power, and authority to exercise all such powers and do all such acts and things as may be appropriate to carry out the purposes of the Academy." The members of the AAA Board elected Mr. Schobel to the office of President-Elect and, therefore, you have the power to suspend him from that and succeeding offices pending the ABCD's investigation and action.

We request a special in-person meeting of the AAA Board be called as soon as possible to give this matter full consideration, unless Mr. Schobel voluntarily suspends himself or resigns prior to such a meeting. During your deliberations we would urge that you focus on the reputation and operations of the American Academy of Actuaries given the American Arbitration Association's award, and the lack of an appeal of the American Arbitration Association's decision.

Respectfully submitted,

Robert A. Anker
Thomas P. Bowles, Jr.
Edwin Boynton
Harold J. Brownlee
Charles A. Bryan
A. Norman Crowder, III
David G. Hartman
John H. Harding
M. Stanley Hughey
Allan M. Kaufman
Stephen L. Kern
Barbara J. Lautzenheiser
W. James MacGinnitie
Bartley L. Munson

Mavis A. Walters
Robert E. Wilcox
P. Adger Williams
Robert C. Winters
Larry D. Zimpleman

cc: Mary Downs, Interim Executive Director

Exhibit 2: Text of NJ Law Email correspondence – 6/26/09

From: Bruce Schobel <BSchobel@soa.org>

To: Dave Hartman <dghartman@comcast.net>

Cc: johnpparks@gmail.com; bill.bluhm@milliman.com; slehmann@pinnacleactuaries.com; Downs@actuary.org; bdschobel@aol.com; OAK cecil OFFICE <oakoffice1@cox.net>; Mike McLaughlin (Deloitte) <mikemclaughlin@deloitte.com>; Gregory Heidrich <GHeidrich@soa.org>; Stacy Lin <SLin@soa.org>; mrenetzky@lockelord.com; kmoran@lockelord.com; chunt@umich.edu

Sent: Fri, Jun 26, 2009 8:56 am

Subject: RE: N.J. Law

New Jersey Code of Criminal Justice

N.J. Stat. section 2C:52-30

-----Original Message-----
From: Dave Hartman [mailto:dghartman@comcast.net]

Sent: Fri 6/26/2009 7:00 AM

To: Bruce Schobel

Subject: N.J. Law

Bruce,

Would you please e-mail me the citation of N.J. law dealing with disclosure of an expunged conviction? Thank you.

Dave

Exhibit 3: Text of John Parks Letter to Past Presidents of the Academy – 7/1/09

July 1, 2009

Dear Past Presidents of the American Academy of Actuaries,

I am writing on behalf of myself and the two immediate Past Presidents of the American Academy of Actuaries. We are writing to you regarding the petition being circulated by David Hartman, seeking to suspend Bruce Schobel as Academy President-Elect. We think this effort is fundamentally unfair, both to the Academy and to Bruce. We would like to give you our perspective on this issue, and based on that perspective, we ask you not to support these efforts.

As you may know, David has circulated a document labeled an Award of Arbitration. That document is from an employment dispute between Sarah Sanford, the former Executive Director of the Society of Actuaries, and the SOA. Bruce was also named in that proceeding; he was the President of the SOA at the time. Rather than the conclusions some have drawn from the Arbitration Award, we draw our conclusions both from what we know the Award is ***not***, and from what we know Bruce to ***be***. There are many others, beyond just the three of us, who believe that in the circumstances that led to the arbitration, Bruce acted courageously, against entrenched interests, to lead the SOA during this past period of turmoil. Many see him as a protector of whistleblowers who restored the SOA to a position of integrity and strength in its internal leadership. Bruce, in our experience, is a passionate, strong, and outspoken questioner of the status quo and is unafraid where his intellectual curiosity will take him or others.

There are several important facts about the materials that have been circulated to you that we want to share with you-- from which we draw much different conclusions than those suggested to you previously.

1. Arbitration Awards have no standing as judicial opinions, decisions, or precedents. They are used when the parties to an agreement (such as in, in this case, an employment contract) agree to be bound to resolve a dispute arising under it through “binding arbitration”. Awards that result from this process are binding **only** on the parties that agreed to be bound by them. Those parties **are** bound, regardless of whether the decision/award: (1) follows any judicial precedent or applicable law, or (2) mak*es its own version of the facts or law*. Arbitration panels:

- Are not bound by the rules of evidence or procedure that pertain to court proceedings in state or federal venues.
- Are not bound to decide according to the principles of law applicable in a court of justice. {See generally *4 Am Jur 2d Alternative Dispute Resolution § 184, American Jurisprudence, Second Ed., 2008 West Group*.)
- Have no binding or generally available references for arbitration precedents.
- Decisions are not appealable except in the rarest of circumstances. The Federal Arbitration Act (found at 9 USC § 1 et seq) , enacted in 1925, provides for contractually-based compulsory and binding arbitration, resulting in an "arbitration award" entered by an arbitrator or arbitration panel as opposed to a "judgment" entered by a court of law. In an arbitration the parties give up the right to an appeal on substantive grounds to a court. Under the FAA, grounds for judicial intervention in an arbitration award are limited to where the award was procured by

"corruption," "fraud" or "undue means" and where the arbitrators were "guilty of misconduct" or "exceeded their powers." It is extremely rare for an arbitration award to be appealed and even rarer for one to be reversed or returned by a court. Courts simply do not exercise routine jurisdiction over arbitral decisions or processes.

In essence, Bruce (and the SOA) are prohibited, by the nature of binding arbitration, from arguing in a legal setting as to why the arbitration panel's conclusions of fact, law, or reasoning are flawed.

2. Arbitration eliminates the ability to rebut decisions. Arbitration is a "private" dispute resolution system, for which the parties pay, in order to avoid litigation in state or federal courts. An arbitration award ***cannot be used to conclude that facts or law (if any) relied on in the decision were true and correct***, as one is entitled to do with a state or federal court decision. (See generally *4 Am Jur 2d Alternative Dispute Resolution § 192, American Jurisprudence, Second Ed., 2008 West Group*.) Given the essential nature of arbitration awards and proceedings, we think it is grossly misleading to characterize this Arbitration Award as a "finding of fact or law" that should be given any deference by anyone other than the parties to the arbitration itself. It is not fair to suggest that a lack of appeal of that decision indicates that the parties "agreed" it was correct. That is not a valid inference or conclusion.

3. Arbitration Awards are not generally publicly available documents. Contractual arbitrations are generally considered to be private, but absent an agreement for confidentiality, either in the contract or mutually agreed later, parties are under no obligation to keep the proceedings private. (See generally, *4 Am Jur 2nd Alternative Dispute Resolution § 44, Jurisprudence, Second Ed., 2008 West Group*.) However, absent circulation by a party, decisions are not generally publicly available, and it would be difficult for a member of the public to obtain copies of such awards. For example, the American Arbitration Association advised that it does post decisions, other than employment decisions, on Lexis/Nexis, but *they do so only after redacting identifying information*. We assume, but we do not know for a fact, that this Arbitration Award being circulated was filed with the Circuit Court of Cook County where Ms. Sanford sued the SOA and Bruce. We believe it was probably filed in that court docket in order to demonstrate resolution of the case initiated there. However, the Academy has done some research to see if this award is generally publicly available, such as in Westlaw, a Google search, and in the on-line Cook County court docket system or from the American Arbitration Association itself, and ***it was not available***. Unless a member of the public were exceptionally well versed and prepped with very specific information about the case information, and physically went to the Cook County courthouse to try to obtain a copy of this decision, it is extremely unlikely a member of the public could get it. We believe the current effort is trying to create a crisis in Academy leadership, by arguing that this decision is not only binding legal authority but that it is also generally publicly available. ***Neither of these arguments is true***. It is ***the*** wide circulation as part of this recall effort that is the only source which we can verify i\as the cause of any "public" knowledge of this award.

4. This Award addressed an employment dispute between Ms. Sanford and the SOA. It is clear that the arbitration award addressed a very contentious employment matter at SOA. The letter we have does not refer to that part of the Arbitration Award's discussion that deals with the propriety of Ms. Sanford's termination itself. That decision states (p. 8) "What occurred… [after Bruce raised issues questioning her performance] with respect to her employment was determined by the Board, which presumably acted in the manner that the members of the Board deemed best for the organization." The critical element of this dispute is action by the SOA Board, the basis for that action, whether termination was for cause, or not for cause, and what was said about the reasons for termination.

As many of you must have experienced, the nature of employment disputes is inherently sensitive and confidential. Information about such disputes is usually closely held by the employer and the employee, neither of which is usually benefited by airing all alleged disputes and bases for employment actions beyond a small group that has a need to know. Seeking and/or repeating second hand information and gossip about why a termination occurred can create significant legal liability for an organization or an individual, particularly where the recipients do not and did not have the authority to make the decision in the first place. This is not a risk to which the Academy should be exposed. We have no reason to question the SOA's actions or to seek information from them about this matter. It would be improper for us to do so. To rehash these issues before the Academy, either in some informal or formal presentation to **our** Board would be fundamentally unfair to all the parties. The Academy has no right to and no business in second guessing the SOA by reviewing or trying to get the bases for the SOA's decision to terminate its ED. This was and is an SOA matter, and we are confident that they have handled it in the best interests of the SOA. This should be the end of that dispute.

5. Reference to a criminal conviction from 30+ years ago. There are various reasons why we believe this isn't appropriate, fair, or relevant. Whatever did or did not happen at that time thirty years ago has been intentionally deleted, ***by court order***, from criminal records in New Jersey, through a process called "expungement." As we have cautioned others as part of this process, ***it is a criminal offence, a violation of the New Jersey Code of Criminal Justice (NJ Stat § 2C:52-30), to reveal the existence of an arrest, conviction or related legal proceeding with knowledge that those matters have been expunged***. Expungement is rarely available, and occurs only with good cause in the eyes of the court. It is a recognized judicial tool to provide relief. If we all choose to comply with the law, we think that is all that anyone must know.

The Roles of the SOA, Academy, and Bruce in this Matter

We believe that the matter of the employment dispute between the SOA and Sarah Sanford is an SOA matter. The SOA Board was presented with whatever evidence it needed to make a decision about whether to terminate Ms. Sanford. We respect the integrity of the SOA's decisions and processes, and we have no right or interest in investigating them. Bruce was the president of the SOA when this dispute occurred, and he remains an officer as its immediate past president and current chairman of its Board. He presides at all SOA Board meetings.

To examine the truth of the findings of the arbitration, the Academy would have to substantively relitigate the Sarah Sanford termination. This is because, as a matter of law (we are told by our Counsel), that award ***does not establish actionable facts and damages as to any one but a party to the binding arbitration***. There is no proper basis for further action by the Academy without that examination. Action without such an examination would be impetuous and unfair. Given the risk to the Academy of conducting such an investigation, it seems also inappropriate and unfair to ask the Academy to do so, and none of its business.

We do not believe that the Academy has anything to fear from Bruce personally and has much to gain professionally. We believe that pursuit of the proposed actions against Bruce would be fundamentally unfair to him. If there are issues that bear examination under the Code of Professional Conduct about the way in which he handled this situation, that is a matter than can and should be referred to the profession's Actuarial Board for Counseling and Discipline (ABCD), where due process can be afforded to him in an orderly prescribed way. And, as has made clear, the author of the petition drive has made a complaint to the ABCD on this matter.

In summary, we believe that letters and other efforts alleging facts and opinions assumed by some but not believed by many who were directly involved in the dispute, and not proven as a matter of fact and law, are being used to discredit Bruce in his future leadership position (*while we note he remains an officer and leader of the organization where the matter arose*), by circulating a generally not publicly available document *(which has no binding legal authority*) about an internal SOA employment matter (*that obviously had strong proponents in the profession on both sides of the dispute*), will only serve to damage the integrity and the reputation of the profession, the Academy, and Bruce without any reasonable or fair basis for action by the Academy.

Sincerely,

John Parks,
President

William F. Bluhm
Immediate Past President

Steven G. Lehmann
Penultimate Past President