

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

BRUCE D. SCHOBEL

Plaintiff,

v.

AMERICAN ACADEMY OF ACTUARIES

Defendant.

Civil Action No.: 1:09-cv-01664-EGS

**THIRD DECLARATION OF BRUCE D. SCHOBEL**

I, Bruce D. Schobel, hereby declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I offer this Declaration in further support of my Motion for a Temporary Restraining Order and Motion for a Preliminary Injunction, and, in particular, to provide additional details regarding the August 5, 2009 special Board Meeting as well as the irreparable harm that I will experience if the Academy's illegal and invalid action is not enjoined. Unless otherwise indicated, the information contained in this declaration is based upon my personal knowledge.

2. Prior to the August 5 Meeting, I had no idea that the Board would consider removing me from my position as President-Elect/Director.

3. I had every reason to believe otherwise. The meeting notice of July 14, 2009 said that "[t]he purpose of the meeting is to discuss with the Board the letter sent to it by Bob Anker on behalf of 19 past presidents of the Academy."

4. That letter requested that the Board "*suspend* the privileges of Bruce D. Schobel's acting as President-Elect ... pending the investigation of the complaint pending against Mr.

Schobel and action by the ABCD, and if required, a *subsequent action* by the Board.” (Emphasis added.)

5. Indeed, that letter specifically ruled out removal. It stated, “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.” The letter also asserted the view of the writers that the Board has “the power to *suspend*.” (Emphasis added.)

6. While the July 14 notice indicated that it would be a “special and critically important meeting,” I certainly considered the possible suspension of the President-Elect/Director to be in keeping with the notion of having a special and critically important meeting—particularly since it was unprecedented.

7. In a subsequent email on July 31, 2009, President John P. Parks reiterated that “[t]he purpose of our meeting will be to determine what action, if any, the Board should take at this time in response to the July 9, 2009 communication from a group of past Academy Presidents to the Board requesting that the current President-Elect be *suspended* from continuing to serve in that capacity and from assuming the position of President *pending the outcome of ABCD proceedings relating to him*.” (Emphasis added.)

8. President Parks’s July 31 email further indicated that “[t]his meeting *will not consider whether any disciplinary action* as to the President-Elect is appropriate at this time.” (Emphasis added.)

9. In addition to no mention of the possibility of removal from office appearing in any written notice, it was not discussed orally with President Parks, Academy Executive Director and General Counsel Mary Downs, or anyone else in a leadership position at the Academy.

10. Thus, my expectation going into the meeting was that there would be a discussion about the letter from the past presidents and, potentially, whether the Board should take any action, possibly including *suspending* me from my position pending the outcome of the ABCD proceeding. I had no expectation that the subject of removal would even be discussed. In the over 40-year history of the Academy, no Officer or Director has ever been removed from office. Indeed, the Academy's Bylaws do not even provide for the removal of a Director and/or Officer.

11. At the August 5 meeting, the subject of *suspension* was never actually considered.

12. Instead, at the outset of the second half of the meeting, which I was permitted to attend (I was excluded from the first half of the meeting), Special Director John Kollar made a motion to *request* my resignation, and the motion was seconded. There was some discussion about this motion.

13. Thereafter, a new motion was made by Special Director Cecil Bykerk to remove me from my position as President-Elect/Director. That motion was seconded by Special Director Michael McLaughlin. In support of their motion, Bykerk and McLaughlin raised a host of new issues beyond those referenced in the letter from the 19 past presidents. Bykerk cited my opposition to a controversial proposal under consideration at the Society of Actuaries, of which he is the President, raising an apparent conflict of interest. McLaughlin raised a long list of issues, ranging from an allegedly offensive email that I sent in 2007, to a more recent issue involving McLaughlin personally, creating a clear conflict of interest with him as well. Special Director Larry Sher weighed in, also by telephone, with his very personal complaint that, in October 2008, I had for a time opposed his becoming President-Elect of the Conference of Consulting Actuaries, creating yet another conflict of interest.

14. When it was my turn to speak, Special Director Stephen Dobrow, by telephone, said that I should hurry because they needed time to vote.

15. I strongly objected to the procedural irregularities that were occurring. I stated that I had received no prior notice that removal was a subject for discussion or that these new subjects raised by Bykerk, McLaughlin and others would be discussed, and was not adequately prepared to speak about any of those new issues. I said that my understanding had been that the discussion was to be limited to the subjects raised in the letter from the 19 past presidents and that I was prepared to address them, though I was constrained as to what I could say due to concerns over confidentiality.

16. I noted that the July 31 email said explicitly that the meeting would not consider whether any disciplinary action was appropriate, and that I considered removal to be the ultimate form of discipline.

17. I said that the process being imposed on me was fundamentally unfair and amounted to a “witch hunt,” a term that had been used previously in the discussion by Director Tom Herget. I noted that I had no warning that this would occur and no opportunity to adequately prepare. I used the word “ambush.”

18. As a result, I stated that I could not participate in this manner, and was outraged by the Board’s divergence from its previously stated limited agenda for the meeting. I said that if the Board wanted to consider these issues that had been raised along with the possibility of removal, then the Board, in the interests of fundamental fairness and due process, should adjourn the meeting and schedule a new meeting, for which I would have sufficient time and opportunity to prepare and to respond to the scurrilous charges that were being thrown at me without

warning. I said that I would be happy to discuss any issues at such second meeting, but that I could not possibly do so in only 10 minutes, especially without having had any time to prepare.

19. Unfortunately, my time was limited, and when I was done objecting to the procedural defects that were occurring, I had to limit my comments to the issues raised in the letter from the 19 past presidents, of which, as I stated, I felt constrained about what I could say.

20. A majority of the Directors present in person voted against removal. Thus, had the Board followed the process laid out in the July 14 meeting notice, which said that telephone participation would not be permitted, the vote for removal would have failed. Only by counting the votes of those participating by telephone can it be said that a majority (but not two-thirds) of Directors voted in favor of removal. Indeed, if the July 14 meeting notice had been followed, the subject of removal may have never arisen since Director Bykerk, who made the motion for removal, did so by telephone.

21. Aside from the illegality of the Board's action in purporting to remove me from my position as Director and President-Elect, I believe the process was fundamentally unfair and denied me due process because: I was never informed that the Board was to consider removing me from office; the original notice and two subsequent ones said that all participants would have to be present in person; many subjects that were raised and considered by the Board were different than those identified in the notice and of which I had prior warning; and I was not given a reasonable amount of time to respond to all of the attacks that were lodged against me, most of which were false and/or extremely misleading.

22. Thus, I believe the Board's action was invalid for the reasons stated above and previously, and as a matter of Illinois law. Accordingly, I believe that I am still the President-Elect/Director of the Academy.

23. Unless the Court acts now to enjoin the Academy's continued interference with my ability to serve in that capacity and fulfill the responsibilities of my office, and ascend to the position of President/Director at the October 26, 2009 membership meeting, I will be irreparably harmed for which no adequate monetary remedy exists.

24. Being President-Elect/Director and then President/Director of the Academy is a unique opportunity to lead a prominent actuarial organization in the area of public policy and professionalism—the Academy's core focus, which is different from that of other actuarial organizations in which I have served. It provides a unique opportunity to have a real impact on the profession and the organization as its leader, both with members and other important constituencies, such as the United States Congress.

25. There is also the prestige associated with being the President-Elect/Director and then President/Director of the Academy that cannot be duplicated and that has a positive impact on my career and current employment.

26. Likewise, bearing the stigma of having been removed from the position as President-Elect/Director would have a devastating effect on my career and could affect my current employment. I have already seen the impact of this on the Actuarial Outpost where fellow actuaries have discussed the fact of my purported removal and what they believe it must mean.

27. In addition, if the Academy's illegal and invalid action is allowed to persist, it will likely have an impact on my other leadership positions in the other actuarial organizations, and possibly on my ability to practice as an actuary at all.

28. Already, the Academy's illegal and invalid action is interfering with my ability to give speeches and make appearances as the Academy's President-Elect/Director at upcoming

events, and with each passing day is depriving me of the ability to effectively carry out my full term of service. The Academy's illegal and invalid action has already stolen more than a month of my one-year term as President-Elect/Director, steals one more day with each day that passes, and threatens to steal much more.

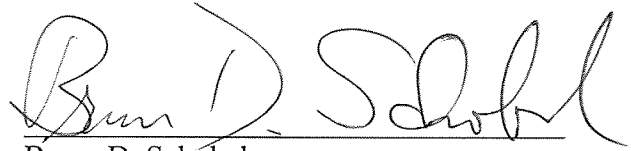
29. In addition, the Board's purported action at the August 5 meeting based on a meeting notice and follow-up correspondence that were deceitful, inaccurate and/or untruthful deprived me of a full and fair opportunity to defend myself in the face of an effort to unseat me from the position of President-Elect/Director and from automatically ascending to the position of President/Director at the October 26, 2009 annual meeting. This lack of due process and fundamental fairness, from an organization that fancies itself as a leader in the actuarial world in the areas of professionalism and ethics, if left standing will further result in irreparable harm that cannot be undone. The harm would be both to me and the Academy's membership, which will be arbitrarily, capriciously and illegitimately denied the continued leadership of someone who was duly elected—unanimously—and who the membership reasonably expected would complete his term as President-Elect/Director this year, become President/Director next year, and serve as Past President/Director for the following two years. It will wreak further havoc as the legitimacy of the Academy's governing structure and future leadership is called into serious question by the Academy Board's illegal and invalid action. Academy members are already expressing their outrage and disillusionment, and questioning the value of continued membership in the Academy, on the Actuarial Outpost and elsewhere.

30. At age 57, I am at the peak of my professional career, and the outcome in this matter will have a serious impact on the future of my career.

31. In addition, my 23-year-old son, a recent college graduate, just entered the actuarial profession on July 20 of this year. I am greatly concerned about the lasting impact this whole episode will have on him and his career. Our shared name, Schobel, is not a common one.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 10, 2009

  
Bruce D. Schobel