

ATTACHMENT 2

From: [Leslie Cadwell](#)
To: [Kisicki, Aaron](#); [Commons, Geoff](#)
Cc: [Alison Milbury Stone](#)
Subject: RE: 8585 - rescheduled deposition of Ron Holland
Date: Tuesday, July 26, 2016 3:53:00 PM

Aaron & Geoff:

I would prefer not to wait for the hearing officer's ruling to put a new date on the calendar that is agreeable to the DPS. Ron Holland and I were able to agree easily to a new date for his deposition, subject to the hearing officer's ruling so that both of us could make plans. And, Ron reached out to the Town to re-engage Sara Davies Coe to handle rescheduling the Town's 30(b)(6) depositions. Ron and I extended each other the courtesy of planning, subject to the outcome of the Hearing Officer's ruling on the motion. I am only asking the DPS to extend the same courtesy that Ron graciously extended so that we can limit the issues that the hearing officer will need to resolve in the absence of an agreement.

Regards, Leslie

From: Kisicki, Aaron [mailto:Aaron.Kisicki@vermont.gov]
Sent: Tuesday, July 26, 2016 1:55 PM
To: Leslie Cadwell <lac@lac-lca.com>; Commons, Geoff <Geoff.Commons@vermont.gov>
Cc: Alison Milbury Stone <Alison@lac-lca.com>
Subject: RE: 8585 - rescheduled deposition of Ron Holland

Leslie,

As you and I discussed on July 12, I offered to hold the 30(b)(6) depo(s) on August 5 or later. With that said, we now have a decision on the motion to quash pending, and I think it would be appropriate to hold off on scheduling those depositions until after the Hearing Officer has ruled. We are still in the process of identifying appropriate Department rep(s), but we will make the designation(s) in advance of the depositions as required by the rule.

The Department's position with respect to your notices of deposition has been made clear in our motion to quash and the request for expedited review. Neither of those filings argue as a blanket rule that you are not allowed to conduct depositions.

Thanks,

-Aaron

From: Leslie Cadwell [mailto:lac@lac-lca.com]
Sent: Tuesday, July 26, 2016 11:23 AM
To: Kisicki, Aaron <Aaron.Kisicki@vermont.gov>; Commons, Geoff <Geoff.Commons@vermont.gov>
Cc: Alison Milbury Stone <Alison@lac-lca.com>

Subject: RE: 8585 - rescheduled deposition of Ron Holland

Hi Aaron & Geoff:

Thanks very much for the letter. I understand that you will not be appearing tomorrow, and as a result, we will not appear either as we do not want to waste the court reporter's time or our own.

As you know, pending a ruling from the Hearing Officer, August 5 is scheduled for Andy Perchlik and Ron Holland's depositions and is now booked. What alternative date do you suggest for the V.R.C.P. 30(b)(6) depositions, and when will you be making the designations that V.R.C.P. 30(b)(6) requires?

If you are taking the position that we are not allowed to conduct depositions, please advise. To date, your focus has seemed to be on timing, but not the right under the discovery rules, the thirty day discovery period or 30 V.S.A. § 31 to conduct depositions. I need clarification so that we can resolve our disagreement, if possible, as is required by V.R.C.P. 26(h) before a motion under Rule 37 may be filed.

Thanks very much in advance for your cooperation in clarifying the DPS's position and narrowing the issues for resolution by the Hearing Officer. Regards, Leslie

From: Kisicki, Aaron [<mailto:Aaron.Kisicki@vermont.gov>]

Sent: Tuesday, July 26, 2016 11:01 AM

To: Leslie Cadwell <lac@lac-lca.com>; Robert Holland (kcf.rrh@gmail.com) <kcf.rrh@gmail.com>; Commons, Geoff <Geoff.Commons@vermont.gov>; Welts, Leslie <Leslie.Welts@vermont.gov>

Cc: Sara Davies Coe <saradavies@together.net>; Alison Milbury Stone <Alison@lac-lca.com>

Subject: RE: 8585 - rescheduled deposition of Ron Holland

Leslie and Alison,

Please see the attached letter memorializing the Department's position with respect to your email from yesterday stating your intent to depose unnamed Department representatives tomorrow. Hard copies to follow.

Thanks,

-Aaron

From: Leslie Cadwell [<mailto:lac@lac-lca.com>]

Sent: Tuesday, July 26, 2016 10:04 AM

To: Kisicki, Aaron <Aaron.Kisicki@vermont.gov>; Robert Holland (kcf.rrh@gmail.com) <kcf.rrh@gmail.com>; Commons, Geoff <Geoff.Commons@vermont.gov>; Welts, Leslie <Leslie.Welts@vermont.gov>

Cc: Sara Davies Coe <saradavies@together.net>; Alison Milbury Stone <Alison@lac-lca.com>

Subject: RE: 8585 - rescheduled deposition of Ron Holland

Thanks for getting back to me so quickly, Aaron. We accommodated your need for an extension on filing your motion because it is our view that such extensions to accommodate counsel's work load and clients' interests in resolving a case without unneeded disputes is best for all involved and is a usual courtesy among practioners in Vermont. It is regrettable that the DPS won't return the same courtesy to avoid the need for more motions.

We'd appreciate the consent from the Town and ANR and will wait until noon to hear back before sending our request to the Board for decision.

Regards, Leslie

Sent via the Samsung Galaxy S®6 active, an AT&T 4G LTE smartphone

----- Original message -----

From: "Kisicki, Aaron" <Aaron.Kisicki@vermont.gov>

Date: 7/26/16 9:42 AM (GMT-05:00)

To: Leslie Cadwell <lac@lac-lca.com>, "Robert Holland (kcf.rrh@gmail.com)" <kcf.rrh@gmail.com>, "Commons, Geoff" <Geoff.Commons@vermont.gov>, "Welts, Leslie" <Leslie.Welts@vermont.gov>

Cc: Sara Davies Coe <saradavies@together.net>, Alison Milbury Stone <Alison@lac-lca.com>

Subject: RE: 8585 - rescheduled deposition of Ron Holland

Leslie,

The Department opposes your request for an extension of time to respond to our motion for partial summary judgment, and, as you have been noticed both on written filings and in discussions with me, the Department will not be present at a deposition you wish to have on July 27.

First and foremost, as we made clear in our July 11 letter to you, your notices of deposition are in contravention of the Hearing Officer's June 16 Scheduling Order and V.R.C.P. 26(h). Therefore, we will not make any Department representative available for deposition until August 5.

Furthermore, you and I discussed the 30(b)(6) depositions telephonically on July 12, and the representations you have made in your latest email are incorrect. You and I did agree to reschedule the 30(b)(6) and Perchlik depositions during our July 12 conversation. Your July 12 follow up email to confirms this understanding. As you will remember, we agreed to Andy's deposition on August 5 – if, as I also told you, the Department did not move to quash – and we decided to table nailing down specific dates for the 30(b)(6) deposition because we had not identified the witnesses. I had offered holding the 30(b)(6) depositions on August 5, but you protested because you argued that you would not have sufficient time to depose all witnesses on one day. In sum, you and I agreed that the depositions would not be held on July 27; we simply did not identify a specific alternate date.

We also oppose your extension request. As the hearing officer pointed out at the status conference, a 30-day response time to the summary judgment motion is more than sufficient. And, as noted above, the Hearing Officer's order expressly contemplated Department responses to discovery

requests after your submission of a response to the motion. Again, the Department has no information with respect to your client's actions that are relevant to the question of whether he violated Title 30, which is the sole and narrow issue presented in the motion for partial summary judgment.

The Department will not be present at any deposition you may want to hold tomorrow, consistent with the agreement we made on July 12. Also, the Department opposes your extension request.

Thanks,

-Aaron

From: Leslie Cadwell [<mailto:lac@lac-lca.com>]

Sent: Monday, July 25, 2016 2:50 PM

To: Robert Holland (kcf.rrh@gmail.com) <kcf.rrh@gmail.com>; Kisicki, Aaron <Aaron.Kisicki@vermont.gov>; Commons, Geoff <Geoff.Commons@vermont.gov>; Welts, Leslie <Leslie.Welts@vermont.gov>

Cc: Sara Davies Coe <saradavies@together.net>; Alison Milbury Stone <Alison@lac-lca.com>

Subject: 8585 - rescheduled deposition of Ron Holland

Parties:

This email serves to inform you Ron Holland and I have agreed to reschedule the deposition noticed for Ron for tomorrow at 1pm to August 5 at 1pm in Montpelier. This schedule is subject to the pending motion to quash and for protective order and is further subject to change after consulting with the Town of Irasburg for rescheduling the 30(b)(6) depositions. Ron has reached out to Sara Davies Coe for assistance in that latter regard, and we hope to get the rescheduling discussion going again.

I have not withdrawn the 30(b)(6) notice to the DPS and, absent an agreement with the DPS to reschedule or a Board order granting the motion to quash/protective order that will prevent us from taking the noticed deposition(s), I plan to be in Montpelier on the 27th at the appointed hour to take the depositions as noticed because we believe the DPS possesses information that is relevant to, among other things, the jurisdictional issue that is the subject of the motion for partial summary judgment. In addition, because of Irasburg's decision last week to stop negotiating with us on rescheduling the 30(b)(6) depositions that were scheduled for July 15th, our opportunity to discover facts relevant to the pending motion for partial summary judgment has been cut short.

In light of the discovery dispute and pending motion to quash/protective order, I am asking for the parties' consent to an extension of time to respond to the motion for summary judgment until after the answers to discovery are in and the depositions are completed or quashed, depending on what the Hearing Officer orders. This would obviate the need for an "emergency" order as the DPS's requested last week and would be fair to the parties, my client, and the hearing officer alike.

We will prepare a motion and represent your consent, should you agree, to go out by email this

afternoon/evening and for filing with the Board tomorrow. Thanks for your consideration. Regards,
Leslie



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