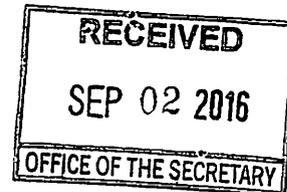


UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549



SEPTEMBER 1, 2016

ADMINISTRATIVE PROCEEDING  
File No. 3-15764

In the Matter of

GARY L. MCDUFF,  
Respondent

**RESPONDENT'S  
MOTION TO COMPEL  
ALTERNATIVELY,  
MOTION TO STRIKE**

TO THE HONORABLE JUDGE ELLIOT:

COMES NOW, Respondent Gary L. McDuff, and files this Motion to Compel and for just cause would show unto the ALJ as follows:

- 1). On or about August 12, 2016, the DOE filed its post-hearing brief.
- 2). Contained in that brief are 21 cases, a law review article, and several web pages from the internet to which the DOE references, but to which McDuff does not have access due to BOP Policy - (No West Law, no internet connection, no law review citation service - If the law review article is physically in the law library, then it is available.) These are not available to McDuff.
- 3). On August 30, 2016, Ms. Frank contacted McDuff for the purpose of conference regarding a two-week extension she is seeking to file her reply brief due to her not having the respondent's exhibits. McDuff noted his willingness to the two-week extension and asked for the same

consideration - specifically, a two-week extension and that Ms. Frank provide copies to McDuff of the copies cited, the law review article, and the web pages to which he does not have access. Ms. Frank advised that she would let him know.

4). On August 31, 2016, McDuff received Ms. Frank's response - "declining to agree with your request." A copy of the denial is attached.

5). On September 1, 2016, McDuff prepared and tendered this "Motion to Compel, Alternatively Motion to Strike" to the Court. Due to Ms. Frank's reply, it is believed the relief requested herein is opposed.

#### MOTION TO COMPEL

6). The Eastern District, Northern District, Western District, and Southern District all adopt "the standards of professional conduct adopted as part of the rules governing the State Bar of Texas [and] shall serve as a guide governing the obligations and responsibilities of all attorneys appearing in [front of] those Courts." Eastern District of Texas Local Rule AT-2; Western District of Texas Local Rule AT-7(a), etc... The various District Courts in Texas also indicate that the Texas rules are "not exhaustive of the standards of professional conduct" and that Courts should consult the ABA Model Rules of Professional Conduct. See *In re Pro Education Intern, Inc.*, 587 F.3d 298, 299 (5th Cir. 2009) (quoting *FDIC v. Fine Ins., Co.*, 50 F.3d 1304, 1312 (5th Cir. 1995); see also *In re American Airlines, Inc.*, 972 F.2d 605, 610 (5th Cir. 1992). See also the "Restatement Third" *Governing Lawyers* - as to duties and responsibilities.

Additionally, attorneys are guided by Rule 11 of the FRCP and the disclosure rules which provide for cooperation between the parties (counsel). Ms. Frank opines that "The Division has no

obligation to copy cases or web pages for any opposing party. In addition, since you have two paralegals, two adult children, and a private investigator helping you with your case. I am confident that, among the six of you, one of you will be able to figure out how to obtain these materials..."

Frank response ¶ 2.

7). "meritorious claims and contentions"

A lawyer shall not bring or defend...or assert or controvert an issue therein unless there is a good-faith basis in law or fact...that is not frivolous. The comments note that counsel "has a duty to use legal process...but also has a duty not to abuse the legal process.

"The action is frivolous, however, if the lawyer is unable either to make a good-faith argument on the merits of action taken" or "by a good-faith argument for an extension" [ ] of law. Rules of Professional Conduct.

8). Significant is Ms. Frank's objection because, somehow, McDuff's incarceration and due process rights are diminished because his request imposes an undefined burden on the "Division's resources." Note, Ms. Frank did not reply, "I do not have the authority to make copies, or print out web pages or law review articles." Nor did Ms. Frank retort, "I would be glad to provide you with these items for the (\$0.02 or \$0.03 per page) copy cost." Nor does Ms. Frank note that all the respondent's exhibits were made available to her in a "searchable PDF format" by Shiloh McDuff, to make her search of relevant materials easier. Nor does Ms. Frank note that McDuff is deemed indigent and relies on unpaid legal assistance from family and friends. Rather, Ms. Frank, who represents the DOE, an agency of the United States government, the largest fiscal entity on the planet Earth, opines that for her to make some copies and send them either to McDuff by mail or Shiloh McDuff by email, would unnecessarily burden the "Division's Resources."

9). Because the denial of same impacts a fundamental right of McDuff, Due Process, the right to notice.... and after review a right to be heard, and because both the State of Texas and the U.S. District Courts do not tolerate the practice of law by surprise - (Both State and Federal Courts favor disclosure and vigorous debate); McDuff moves to Compel: Alternatively, McDuff moves to strike the pleadings of the DOE to which the cases, law review article, or website support - and to strike out those offending sections.

10). Because Ms. Frank's refusal is not based on legal or factual grounds (Ms. Frank did not ask for a token fee for copies) but rather a straight refusal in an attempt to harass or unduly burden McDuff. McDuff moves to strike the offending pleadings.<sup>1</sup>

11). McDuff requests alternatively an extension for 14 days from the date of his receipt of the cases, law review article, and web pages in addition to/alternatively to - his 'Motion to Compel / Motion to Strike'.

12). McDuff does not make this request for any improper purpose but in the interest of justice.

### PRAYER

For these reasons, McDuff requests the ALJ - compel the DOE to produce the cases, law review, and websites so that he may have time to review and respond and provide McDuff additional time to respond (14 days); Alternatively, McDuff moves to strike the citations, law

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<sup>1</sup> The paralegals are under the same restrictions as McDuff. The private investigator who has donated time to assist partially with the case is not under the control of McDuff, nor is the donated time of his adult children. McDuff is not aware of any statute anywhere in the United States, State Federal, Local, Municipal or otherwise where a burden is imposed on one's adult children to expend resources, time, effort, or otherwise in support of one's defense. Perhaps Ms. Frank can enlighten McDuff with a citation.

review article, and web pages out of fundamental fairness and due process. McDuff requests such other and additional relief to which he may be entitled whether in equity or in law.

Respectfully submitted,

  
\_\_\_\_\_  
Gary L. McDuff,  
Respondent

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Compel / Motion to Strike was mailed to the person(s) listed below on the 2<sup>nd</sup> day of September 2016, via US Postal Service, pre-paid mail.

Janie L. Frank, Esq.  
Fort Worth Regional Office  
Securities and Exchange Commission  
801 Cherry Street, Suite 1900,  
Fort Worth, TX 76102-6882

Honorable Brenda P. Murray  
Chief Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-2557

Honorable Cameron Elliot  
Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-2557

# EXHIBIT

“A”

- Janie Frank letter/email dated  
August 31, 2016

## Gary McDuff's request for copies of materials

Frank, Janie L.

Wed 8/31, 2016 2:21 PM

shilohmcduff@hotmail.com <[REDACTED]>

Shiloh,  
I am replying to a request from your father from yesterday. Would you please forward him the following message?  
Thank you.

August 31, 2016

Gary,

I have considered the request you made of me yesterday, in which you requested that I print and send to you copies of approximately 21 cases, a law review article, and several webpages from the internet, in exchange for your agreement to not oppose the Division's motion to extend the reply brief deadline by two weeks.

I am declining to agree to your request. Your request is unrelated to the Division's motion to extend the briefing deadline. It is inappropriate and contrary to the common courtesy practiced among experienced lawyers to withhold consent to a non-controversial extension motion in order to extract a favor from the opposing party, particularly when the opposing party has no obligation to perform the favor requested. The Division has no obligation to copy cases or webpages for any opposing party. In addition, since you have two paralegals, two adult children, and a private investigator helping you with your case, I am confident that, among the six of you, one of you will be able to figure out how to obtain these materials without using the Division's resources to do so.

Janie Frank