

Shocking Behavior Sets New Standard for Terminating Sanctions

By Carl Mueller

In a recent decision, *Crawford v. JPMorgan Chase Bank, N.A.*, the California Appellate Court definitively set the upward limit on abusive behavior during a deposition:

If ever a case required terminating sanctions, this is it. Crawford threatened to use pepper spray and a taser on opposing counsel and was openly contemptuous of the trial court. He made it impossible to continue with the litigation. Far from the trial court abusing its discretion, ***it would have been an abuse of discretion not to impose a terminating sanction.***

Crawford v. JPMorgan Chase Bank, N.A. (2015) Appellate Case No. B257412 (emphasis added).

To be sure, the behavior of the attorney in question, the named appellant, Mr. Crawford, was particularly egregious. At his deposition, Mr. Crawford produced a can of pepper spray during initial admonitions said:

Mr. Traver, if things get out of hand, I brought a what is legally pepper spray, and I will pepper spray you if you get out of hand.

Which Mr. Crawford followed by producing a stun gun and saying:

If that doesn't quell you, this is a flashlight that turns into a stun gun.

Mr. Crawford then demonstratively discharged the stun gun twice.

When opposing counsel ended the deposition and filed the inevitable motion for terminating sanctions based on Mr. Crawford's behavior, Mr. Crawford's Opposition papers referred to as the moving party, JPMorgan Chase, as "Heavenly Father," and referred to the trial court as "masquerading as a Superior Court Judge" and "sick and demented."

As a point of context, Mr. Crawford is a past candidate for superior court judge in San Diego county, and was described as follows in the San Diego Tribune:

A candidate for San Diego's Superior Court once tried to get an African-American judge who was the former leader of the local chapter of the NAACP removed from his case because of what he termed "her permanent disability as a Negro racist."

The candidate, Douglas Crawford of San Diego, is also facing a disciplinary suspension from the State Bar on another matter in the same case: For emailing lawyers representing the opposing side in a lawsuit, saying that his client would trigger an IRS audit of the opposing party if settlement talks did not begin.

Moran, Greg, (April 25, 2014) The San Diego Union-Tribune, "Candidate called black judge 'racist,'" <http://www.sandiegouniontribune.com/news/2014/apr/25/candidate-called-black-judge-racist/>

Whether or not Mr. Crawford deserved terminating sanctions, which few could argue, the most interesting part of this decision is the appellate court's decision that "it would have been an **abuse of discretion not to impose a terminating sanction.**" California Code of Civil Procedure § 2023.030(d) grants court statutory authority to impose terminating sanctions "against anyone engaging in conduct that is a misuse of the discovery process." However, in every instance, the statute uses the language "may," allowing a trial court discretion to refuse imposing sanctions.

While no one will question the outcome of this case, the new standard, requiring the issuance of terminating sanctions, seemingly contradicts the statutory language of California Code of Civil Procedure § 2023.030. Although it is doubtful that real life fact patterns will mirror this case more than a few times in a century; it is also doubtless that many motions for terminating sanctions based on comparatively benign behavior will now cite Crawford v. *JPMorgan Chase Bank, N.A.* for the proposition that in light of the actions of the opposing party, "it would [be] an abuse of discretion not to impose a terminating sanction."

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