

Plaintiff's Statement [Rule 26(d)]:

The Defendant's Board of Directors ("Board") is required to hold all their meetings in open session (A.R.S. § 33-1804(A)), but there are five (5) enumerated circumstances (A.R.S. § 33-1804(A)(1-5)) allowing a closed meeting **if the Board first complies with the requirements of A.R.S. § 33-1804(C)**.

A.R.S. § 33-1804(C) states (underscore added):

Before entering into any closed portion of a meeting of the board of directors, or on notice of a meeting under subsection D of this section that will be closed, the board shall identify the paragraph under subsection A of this section that authorizes the board to close the meeting.

A prior Court Order directed the Defendant to produce to the Plaintiff ("Homeowner") meeting notices, agendas and meeting minutes for the Board. Those documents show numerous closed meetings by the Board. But, none of those documents show any vote or formal action by the Board at any time to identify the statutory paragraph which "authorizes the board to close the meeting."

The Homeowner sent interrogatories to the Defendant which included the following definitions:

The phrase "**describe in detail**" as used in these interrogatories includes a request for a complete description and explanation of the facts, circumstances, analysis, opinion, legal basis, and other information relating to (as that phrase is defined below) the subject matter of a specific interrogatory.

"Relating to" means containing, constituting, considering, comprising, concerning, discussing, regarding, describing, reflecting, studying, commenting or reporting on, mentioning, analyzing, or referring, alluding, or pertaining to, in whole or in part.

One interrogatory states the call of the question, for each closed meeting:

"describe in detail where, when and how the Board complied with the requirement of A.R.S. § 33-1804(C) to 'identify the paragraph under subsection A of this section that authorizes the board to close the meeting'."

The Defendant did not "furnish the information available to it" (Ariz. R. Civ. P. 33) to describe, in any way, where, when and how the Board voted or took formal action to identify the paragraph under A.R.S. § 33-1804(A) which authorizes the board to close the meeting. Per Ariz. R. Civ. P. 37(a)(4), the court may treat an evasive or incomplete disclosure, answer, or response as a failure to disclose, answer, or respond."

The Defendant has provided two separate answers to a single set of interrogatories. After the first set of answers were not compliant, counsel for the parties had a telephone conference wherein the Homeowner's counsel explained the call of the question for the interrogatory in dispute. Despite that conversation, the Defendant has continued to avoid answering the call of the question or "furnish the information available to it."

The main part of the Defendant's evasive and incomplete response is (bold added):

Answering further, **SSV HOA complied with the requirement of A.R.S. § 33-1804(C)** – which provides full: "Before entering into any closed portion of a meeting of the board of directors, or on notice of a meeting under subsection D of this section that will be closed, the board shall identify the paragraph under subsection A of this section that authorizes the board to close the meeting" – **by providing notice to the community of an upcoming closed executive meeting.**

The Homeowner notes, the question is not what the homeowners association did; the question is "where, when and how" did the Board fulfill its statutory obligation prior to each closed meeting.

The Plaintiff Homeowner seeks an Order requiring an answer to the interrogatory which includes "where, when and how" the Board fulfilled its statutory obligation to identify the paragraph under A.R.S. § 33-1804(A) applicable to each matter considered in a closed session.

Defendant's Statement:

As indicated by Plaintiff in its statement, Rule A.R.S. § 33-1804 (C) provides: "Before entering into any closed portion of a meeting of the board of directors, or on notice of a meeting under subsection D of this section that will be closed, the board shall identify the paragraph under subsection A of this section that authorizes the board to close the meeting". Contrary to Plaintiff's assertion, the statutory provision does not require a "vote or formal action" by the Board.

The Interrogatory at issue did not ask when, where and how the Board voted, but where, when and how the Board complied with A.R.S. § 33-1804 (C). In response, Defendant answered as follows:

This information is set forth in the document production that accompanied SSV HOA's Rule 26.1 Initial Disclosure Statement. Please see the Board of Directors Meeting Notices produced as SSHOA000001 through SSHOA000021. Each of the referenced documents identifies the statutory subsection that allowed the Association to go into executive session. Answering further, SSV HOA complied with the requirement of A.R.S. § 33-1804(C) – which provides full: "Before entering into any closed portion of a meeting of the board of directors, or on notice

of a meeting under subsection D of this section that will be closed, the board shall identify the paragraph under subsection A of this section that authorizes the board to close the meeting” – by providing notice to the community of an upcoming closed executive meeting. In advance of each Board of Directors Meeting (open session), the SSV HOA members receive an electronic notification of the meeting. While unrequired, such electronic notification contains the following statement as a voluntary and transparent communication to homeowners about the nature and notice of closed session meetings:

“Executive Session Board Meetings - Per Arizona state law, there are some topics of Association business that are considered confidential, and are not open to homeowners or residents unless specifically invited by the Board. If invited, the homeowner is only in attendance for the portion of the meeting they are directly involved with. Notice of executive session meetings will be posted on the bulletin board outside the office, and conform to state law.”

The dated documents and this response fully answer Plaintiff’s Interrogatory and show compliance with A.R.S. § 33-1804 (C).