

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**DEFENDANT CALVIN RIDGELL'S MOTION FOR CLARIFICATION, TO EXCUSE
HIS IN COURT PRESENCE, AND TO CONTINUE**

NOW COMES Defendant Calvin Ridgell, by and through his attorneys, Timothy P. Scahill and Steven B. Borkan of BORKAN & SCAHILL, LTD. and seeking clarification regarding scope of December 20, 2023 hearing, to excuse Defendant Ridgell's in-court presence, and for continuance of December 20, 2023 hearing, states as follows:

INTRODUCTION

Pending before this Court is Plaintiffs' Motion for Default directed against Defendant Calvin Ridgell. *See* Dckt. No. 585, 586. However, Plaintiffs filed that motion in September, after Defendant Ridgell's then-counsel cancelled his September 18 deposition. The reason for the last-minute cancellation, by Ridgell's counsel (not Ridgell) was that his prior attorneys believed a conflict had arisen and they determined they could not ethically move forward. Soon thereafter undersigned took over the representation of Defendant Ridgell, a new deposition date of November 30, 2023 was set, and the undersigned prepared Defendant Ridgell for that deposition. Plaintiffs and Defendant Ridgell's counsel had been in discussions about certain parameters of the deposition. Defendant Ridgell was set to go forward when, two days before the deposition, Plaintiffs "postponed" it.

Plaintiffs have failed to update this Court on these relevant occurrences, which should moot their present motion.

Without the benefit of the developments, on December 12, 2023, Judge Valderrama referred Plaintiffs' Motion to this Court and this Court thereafter ordered Defendant Ridgell personally to appear in Court for a hearing on this Motion on December 20, 2023. *See* Dckt. No. 630.

Given Defendant Ridgell's compliance and his willingness and readiness to sit for a deposition that Plaintiffs cancelled, Defendant Ridgell seeks to be excused from personally appearing in Court given the issues and evidence currently presented to this Court. Alternatively, pursuant to well-established law (*see e.g. Johnson v. Cherry*, 422 F.3d 540, 552 (7th Cir. 2005)), Defendant Ridgell seeks clarification and the required notice regarding the scope of these proceedings so that he may properly prepare to provide the information that this Court seeks and be given the required notice and opportunity to respond prior to any such hearing. Thus, in the event that the December 20, 2023 hearing delves into any matters beyond Defendant Ridgell's availability to proceed with his deposition on September 18, 2023, Defendant Ridgell seeks the required notice and a continuance so that he may properly prepare for and respond to any other issues that this Court might address therein.

PROCEDURAL HISTORY

On September 18, 2023, Plaintiffs filed a Motion for Default and Other Sanctions Against Defendant Ridgell. *See* Dckt. No. 585. The basis for this Motion was Defendant Ridgell's failure to appear for his scheduled deposition on September 18, 2023. *Id.* Indeed, while there was, of course, a long history preceding the filing of that Motion, the consequences of that were addressed within this Court's June 15, 2023 ruling which ordered Plaintiff to notice the deposition and advising Defendant Ridgell that he risked default and other sanctions if he did not appear. *See* Dckt. No. 520 at 8 ("Plaintiffs may notice his deposition. If Defendant Ridgell fails to appear for his next scheduled deposition, he risks a default judgment or other appropriate sanctions.").

Plaintiffs noticed this deposition for September 18, 2023. While the September 18, 2023 deposition indeed, did not proceed as scheduled, this was not at the behest of Defendant Ridgell. As detailed in Defendant Ridgell's Response to Plaintiffs' Motion, he was not the individual who cancelled the September 18, 2023 deposition. Rather, it is undisputed that this was done by his former counsel as a result of those attorneys' own determination that a legal conflict existed that precluded their representation of Defendant Ridgell. For his part, Defendant Ridgell stood ready, willing, and able to sit for his deposition on September 18, 2023. Plaintiffs have not introduced any evidence or argument to the contrary. They made no allegations to this effect in their Motion and have not filed any papers or submitted any evidence since that time supporting any such conclusion. This is undisputed and can be confirmed, if necessary, by Defendant Ridgell's former attorneys if this Court needs even further substantiation.

Thereafter, as a result of the conflict of his prior attorneys, the undersigned filed their appearances on behalf of Defendant Ridgell. In November 2023, Plaintiffs' attorneys sent a notice of deposition for Defendant Ridgell to appear for his deposition later that month. *See* Ex. 1. After resolving some attorney scheduling issues, the parties agreed that Defendant Ridgell's deposition would proceed on November 30, 2023. However, on November 28, 2023, Plaintiffs postponed the deposition of Defendant Ridgell because of an issue over scope of the deposition. *See* Ex. 2.

Once again, Defendant Ridgell individually had no role whatsoever in this cancellation and he, again, stood ready, willing, and able to proceed with the deposition as scheduled on November 30, 2023. Indeed, despite that this cancellation was at the behest of Plaintiffs' counsel not Defendant Ridgell, Defendant Ridgell's counsel specifically advised and volunteered to Plaintiffs' counsel during a Local Rule 37.2 telephone conference, that Defendant Ridgell would agree to appear for his deposition regardless of timing under Fed. R. Civ. P. 29. Plaintiffs opted to cancel the deposition rather than file a motion with the court to settle any disagreement or to proceed as scheduled reserving

their right to reopen, should they intend to move the court to expand the scope. To this end, while there are still some scope issues that might need to be addressed by the parties going forward for this deposition, Defendant Ridgell himself remains ready, willing, and able to proceed with his deposition.

ARGUMENT

Defendant Ridgell Should Be Excused From Any Personal Court Appearance; Alternatively, Defendant Ridgell Is Entitled To Prior Notice And An Opportunity To Respond Before Any Such Hearing Commences Or Sanctions Imposed On Any Bases Or Evidence Other Than His Personal Availability To Appear On September 18, 2023.

The only dispute currently between the parties relates to issues regarding the proper scope of Defendant Ridgell's deposition and the parties have conferred and are still conferring on those issues. However, Defendant Ridgell has not refused to sit for his deposition as a result of this nor otherwise interfered with this deposition proceeding in this case. Given that Defendant Ridgell was scheduled to be deposed and was ready, willing and able to do so on November 30, 2023, but Plaintiffs cancelled the deposition, Plaintiffs' Motion appears to be moot at this point and Defendant Ridgell should be excused and the hearing continued on these bases alone.

Moreover, there is presently no dispute regarding the circumstances of Defendant Ridgell's previous failure to appear for his September 18, 2023 deposition. Plaintiffs have not accused him *personally* of cancelling this and Defendant Ridgell has denied through undersigned counsel doing so. With respect to the scope of the present Motion, this should resolve the matter under governing law because a party cannot be defaulted without having engaged in specific willful conduct of his own. *See* Dckt. No. 597 at ¶¶ 11-13. Stated another way, sanctions of this degree cannot be meted out on a party based upon the alleged acts of another party. *Id.* And, with respect to the issues precipitating the first Motion to Compel filed in February 2023 (and ruled upon in June 2023), this Court already addressed these circumstances in its Order of June 2023 and there has been no indication by the Court that any of these issues are currently being considered as bases for sanctions against Defendant Ridgell. *See* Dckt. Nos. 520, 630.

To the extent that anything other than the cancellation of the September 2023 deposition is intended to be addressed on December 20, the law requires Defendant Ridgell to be specifically apprised of that before the hearing and also be given an opportunity prepare and respond to such evidence, submit evidence and brief in his defense, and otherwise prepare himself for whatever is intended at this hearing. This is not simply just fair practice but is required by existing law. *See Johnson v. Cherry*, 422 F.3d 540, 552 (7th Cir. 2005). As noted in *Johnson* in overturning a court's entry of sanctions in which specific prior notice of the conduct that might be subject to the hearing:

As we have noted, before a court may impose sanctions *sua sponte*, it must give the offending party notice of its intent to do so and the opportunity to be heard...“Providing such notice and a hearing prevents misunderstandings between the offending party and the sanctioning judge, provides an orderly manner and calm forum in which each party has had time to prepare adequately, and certainly aids our review on appeal.” A general notice that the court is contemplating sanctions is insufficient; rather, the offending party must be on notice of the specific conduct for which she is potentially subject to sanctions.

Id. Other cases are in accord. *See U.S. v. 1948 South Martin Luther King Dr.*, 270 F.3d 1102, 1115 (7th Cir. 2001) (overturning sanction imposed because it was not precipitated by specific prior notice of conduct in which sanctions might be lodged by court); *Larsen v. City of Beloit*, 130 F.3d 1278, 1286 (7th Cir.1997) (same).

Here, Defendant Ridgell contends that it is undisputed that he was not individually responsible for the cancellation of his September 18, 2023 or November 30, 2023 deposition. Accordingly, Defendant Ridgell believes that summoning him into Court for an in-person hearing on these matters is not necessary under the circumstances. He therefore prays this Court excuse his presence.

In the alternative, in the event that the scope of this Court's December 20, 2023 hearing is intended to delve into any matters or evidence or inquiry beyond simply confirming that he was ready, willing, and able to proceed with his deposition on September 18, 2023, Defendant Ridgell prays that he be given prior notice of any other matters which might be addressed, any evidence that might be submitted or inquiries made, and an opportunity to respond in writing to such allegations prior to any

hearing commencing. This is not only required under law in general but is particularly appropriate here. Specifically, as this Court is well-aware, there are highly sensitive issues in this case which potentially implicate various privileges of Defendant Ridgell including those under *Jaffee v. Redmond*, 518 U.S. 1 (1996) as well as attorney-client privilege and touch upon sensitive, and privileged information of Defendant Ridgell personally that he must be given a full and fair opportunity to prepare to address or object to if necessary.

WHEREFORE Defendant Calvin Ridgell prays this Court excuse his in-court appearance, provide the notice and clarification specified above, and continue hearing and for whatever other relief this Court deems fit.

Respectfully submitted,

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