

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

Derrick Schaeffer)
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) Case No. 19-CV-7711
 Plaintiff,)
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 v.)
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 City of Chicago, et al.)
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 Defendants.)

**AGREED NON-PARTY COOK COUNTY STATE'S ATTORNEY'S OFFICE'S
MOTION TO EXTEND THE TIME TO FILE ITS BRIEF IN RESPONSE TO
PLAINTIFF'S RENEWED MOTION TO COMPEL**

Non-Party Cook County State's Attorney's Office ("CCSAO"), by its attorney, KIMBERLY M. FOXX, State's Attorney of Cook County, through her Assistant State's Attorney Seyon Flowers, respectfully moves this Court for an agreed extension of time to file its brief in response to Plaintiff's Renewed Motion to Compel. In support of his motion, Cook County states as follows:

Background

1. On July 15, 2020 Plaintiff filed a Motion to Compel Non-Party Cook County State's Attorney's Office to produce documents withheld in its response to Plaintiff's subpoena.
2. On August 12, 2020, the Court granted the motion without prejudice subject to CCSAO providing a revised privilege log by August 27, 2020.
3. On August 31, 2020, the CCSAO provided a revised privilege log to Plaintiff.
4. On September 8, 2020, Plaintiff filed a Renewed Motion to Compel,
5. On September 9, 2020, the Court set a briefing schedule directing the CCSAO to file a Response to Plaintiff's Renewed Motion to Compel by September 22, 2020.

6. On October 2, 2020, the Court ordered that any motion to extend time to respond filed by the CCSAO must comply Rule 6(b)(2) of the Federal Rules of Civil Procedure, and that if the CCSAO did not file the motion by 4:00 p.m. on October 5, 2020, the Court would grant Plaintiff's Motion to Compel.

Argument

7. On October 5, 2020, after a more intensive review of all CCSAO documents responsive to the subpoena, the CCSAO tendered a more fulsome set of documents to the Plaintiff.

- a. CCSAO has now tendered to Plaintiff 146 pages out of a total of 171 pages.
- b. These 146 pages contain numerous redactions of personally identifying information of victims, witnesses and the defendant including social security numbers, phone numbers, home addresses, driver's license numbers and other private information.
- c. These 146 pages also include two pages with small redacted sections for privileged information subject to the attorney opinion work product privilege, and potentially the deliberative process privilege. These two pages are CCSAO 000021 and CCSAO 000032.
- d. CCSAO has withheld 25 pages consisting only of LEADS (Law Enforcement Agencies Data System) documents. Pursuant to 20 Ill. Adm. Code 1240.80(d), the CCSAO can only disseminate LEADS documents to agencies authorized by the Illinois State Police.

8. The CCSAO has not yet but would very much like to create a revised Privilege Log, pursuant to Fed. R. Civ. P. 45(e)(2)(A)(ii), regarding the 25 pages and two small redactions.

9. The CCSAO also seeks the opportunity to file a formal Response to Plaintiff's Renewed Motion to Compel, in order to fully address Plaintiff's extensive arguments regarding attorney opinion work product privilege and deliberative process privilege.

10. The CCSAO requests this Court to allow ten days, until October 15, 2020, for filing of the Response to Plaintiff's Renewed Motion to Compel.

11. The CCSAO intends to comply with all orders of the Court and does not intend to unnecessarily delay or hamper Plaintiff's efforts in this matter.

12. The response to this subpoena has thus far been assigned to Assistant State's Attorney Dana Brisbom. ASA Brisbom's current assignment includes a significant caseload of worker's compensation cases. The Worker's Compensation Section of the CCSAO has been challenged with a lack of resources and staffing. The instant subpoena review has unfortunately suffered from an oversight as a result of ASA Brisbom's heavy workload.

13. The Court has directed that the instant motion to extend time shall comply with Rule 6(b)(2) of the Rules of Federal Civil Procedure.

14. Pursuant to Fed. R. Civ. P. 6(b) the Court may, for good cause, extend the time to file motion papers, on motion made after the time has expired if the party failed to act because of excusable neglect. Under 6(b)(2), the Court may not act to extend time if:

- a. the motion is for a new trial or renewing a motion for judgment as a matter of law within 28 days under Rule 50(b) or (d),
- b. the motion seeks amended findings 28 days after the entry of judgment under Rule 52(b),
- c. motion for a new trial or to alter a judgment within 28 days under Rule 59(b), (d) or (e), or
- d. motion for relief from a final judgment, order or proceeding for excusable neglect or other reasons justifying relief under Rule 60(b).

15. On August 12, 2020, the Court entered an Order granting Plaintiff's Motion to Compel without prejudice subject to the CCSAO providing Plaintiff with a revised privilege log

by August 27, 2020. The CCSAO did not produce the revised privilege log until August 31, 2020. Subsequently, the Court entered further Orders on September 8, 2020, and October 2, 2020, amending its August 27, 2020 Order with further directions to the CCSAO.

16. The CCSAO asks the Court to consider its August 27, 2020 Order as not a final judgment, as it was further amended on September 8, 2020 and October 2, 2020, and has not acted as a final Order requiring production of the entire CCSAO file.

17. Therefore, the instant motion would not be seeking relief from a final judgment, order or proceeding under Rule 60(b).

18. The instant motion also complies with Rule 6(b)(2), as it does not contemplate a new trial under Rule 50(b) or (d), or Rule 59(b), (d) or (e). Additionally, under Rule 52(b), there is no showing that an extension of time would affect substantial rights of the requesting party.

19. The CCSAO seeks one additional week, or until October 12, 2020, to complete a sufficient revised Privilege Log, and file a Response to Plaintiff's Renewed Motion to Compel. The CCSAO has in good faith, undertaken an extensive review of the 171 pages and produced 146 pages, with minor redactions on two pages, and 25 pages withheld as required by law.

20. The CCSAO seeks time to provide a full analysis of the attorney work product and deliberative process privilege applicable to the redactions.

21. Plaintiff has no objection to this continuance request to October 15, 2020.

WHEREFORE, for the foregoing reasons, the Cook County State's Attorney's Office respectfully requests that this Court extend the time to respond to Plaintiff's Renewed Motion to Reconsider for ten days or until October 15, 2020.

Dated: October 5, 2020

Respectfully Submitted,

Kimberly M. Foxx
State's Attorney of Cook County

By: s/ Seyon Flowers
Assistant State's Attorney
Supervisor, Worker's Compensation
Cook County State's Attorney's Office
500 Richard J. Daley Center
Chicago, Illinois 60602
312-603-6124
seyon.flowers@cookcountylil.gov

Attorney for Non-Party Cook County

CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record who are deemed to have consented to electronic service.

/s/ Seyon Flowers
Assistant State's Attorney