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| NO. X06-UWY-CV-18-6046436 S : | SUPERIOR COURT |
| ERICA LAFFERTY, ET AL : | COMPLEX LITIGATION DOCKET |
| V. : | AT WATERBURY |
| ALEX EMRIC JONES, ET AL : | MARCH 23, 2022 |
| NO. X06-UWY-CV-18-6046437 S : | SUPERIOR COURT |
| WILLIAM SHERLACH : | COMPLEX LITIGATION DOCKET |
| V. : | AT WATERBURY |
| ALEX EMRIC JONES, ET AL : | MARCH 23, 2022 |
| NO. X06-UWY-CV-18-6046438 S : | SUPERIOR COURT |
| WILLIAM SHERLACH, ET AL : | COMPLEX LITIGATION DOCKET |
| V. : | AT WATERBURY |
| ALEX EMRIC JONES, ET AL : | MARCH 23, 2022 |

**CORRECTED OBJECTION TO PLAINTIFFS' EMERGENCY MOTION FOR ORDER REQUIRING ALEX JONES TO APPEAR FOR DEPOSITION ON PENALTY OF CIVIL CONTEMPT, INCLUDING THE ISSUANCE OF AN ODER DIRECTING THE ARREST OF ALEX JONES IN ORDER TO SECURE HIS PRESENCE TO APPEAR BEFORE THE COURT AND TESTIFY**

Pursuant to the Court's oral order on March 23, 2022, the Jones Defendants submit this objection to the Plaintiffs' emergency motion for the Court to issue a capias for Defendant Alex Jones.

At the outset, the Plaintiffs' motion's reliance solely on the Court's inherent authority is misplaced as no provision of Connecticut law grants the Court authority to issue a capias as to a witness who has not been subpoenaed. Second, the Plaintiffs' motion is untimely as they have failed to formally move to compel Alex Jones to attend his deposition. Third, even if the Court has the authority to issue a capias to a witness not subject to a subpoena, Practice Book § 13-28(f) clearly instructs that the party seeking the capias must seek it in the district that issued the subpoena if the deponent is not a resident of Connecticut, which is clearly not this Court.

Thus, the Jones Defendants ask the Court to deny the Plaintiffs' motion for a capias or any form of arrest warrant for Mr. Jones.

**Relevant Factual Background**

As part of a rescheduling agreement between counsel, the deposition of Alex Jones in this case was rescheduled to occur on March 23, 2022 and March 24, 2022. On March 21, 2022, Mr. Jones' counsel sought an emergency protective order to temporarily delay the deposition on the advice of Mr. Jones' doctor. The Court denied the motion after a hearing on March 22, 2022.

On March 23, 2022, counsel for the Plaintiffs and counsel for Mr. Jones appeared at the place designated in Austin, Texas for his deposition. Mr. Jones did not appear for his deposition.

Mr. Jones' nonappearance comes upon the advice of a physician who arrived in Austin to visit him on March 20, 2022. On March 21, 2022, the physician's personal observations of Mr. Jones so alarmed the physician that he insisted on conducting a physical examination of Mr. Jones. He immediately advised Mr. Jones to go to an emergency room or call 911. After Mr. Jones refused, the physician advised him to stay home, which Mr. Jones did not do. The physician subsequently arranged for a comprehensive medical workup to be conducted for Mr. Jones on March 23, 2022.

The physician remains firm in his initial recommendation that Mr. Jones neither attend a deposition nor return to work until the results of the comprehensive medical workup are returned, and he opines that Mr. Jones stands at serious risk of harm.

## Argument

### I. No provision of Connecticut law grants the Court authority to issue an order to compel or a capias as to a witness who has not been subpoenaed.

The Practice Book contemplates two ways by which witnesses may be notified of a deposition. First, Practice Book § 13-27 states that "any person" may be orally examined if they received reasonable notice in writing. Second, Practice Book § 13-28 contemplates the issuance of subpoenas to compel the attendance of "any witness."

The difference between these two sections is stark. § 13-27 contemplates a cooperative process where a witness complies voluntarily with a written notice of deposition such as the one that Mr. Jones received. § 13-28 contemplates a compulsory process where a witness refuses to comply voluntarily and subpoenas must issue to command him to provide testimony. The former is cooperative. The latter is adversarial.

This litigation is complicated – to the point that it has been assigned to Connecticut's complex litigation docket and the Court has held monthly status conferences to manage this case. Counsel have endeavored to work together as to scheduling and other discovery matters as their duties as officers of the court require them to do. Cooperation as to matters of discovery, however, does not purge the litigation of its adversarial character.

As the Plaintiffs indicated in the hearing during which the Court ordered this accelerated briefing, they never served Mr. Jones with a subpoena, which is the prescribed way to initiate the process of compelling his attendance at a deposition. They now seek a capias to procure his attendance.

The issuance of a capias is governed by Practice Book § 13-28(f). The plain language of Practice Book § 13-28(f) clearly presupposes that the witness has been subpoenaed before a capias is sought:

> If any person to whom a lawful subpoena is issued under any provision of this section fails without just excuse to comply with any of its terms, the court before which the cause is pending, or any judge thereof, or, if the cause is pending in a foreign court, the court in the judicial district wherein the subpoenaed person resides, may issue a capias and cause the person to be brought before that court or judge, as the case may be, and, if the person subpoenaed refuses to comply with the subpoena, the court or judge may commit the person to jail until he or she signifies a willingness to comply with it.

Likewise, Conn. Gen. Stat. § 52-143(e)'s plain language presupposes a subpoena before a capias may issue:

> If any person summoned by the state, or by the Attorney General or an assistant attorney general, or by any public defender or assistant public defender acting in his official capacity, by a subpoena containing the statement as provided in subsection (d) of this section, or if any other person upon whom a subpoena is served to appear and testify in a cause pending before any court and to whom one day's attendance and fees for traveling to court have been tendered, fails to appear and testify, without reasonable excuse, he shall be fined not more than twenty-five dollars and pay all damages to the party aggrieved; and the court or judge, on proof of the service of a subpoena containing the statement as provided in subsection (d) of this section, or on proof of the service of a subpoena and the tender of such fees, may issue a capias directed to some proper officer to arrest the witness and bring him before the court to testify.

In the limited time allotted to brief this issue, the undersigned have been unable to locate any authority establishing an exception to the requirement that a subpoena must issue before a capias. Instead, they have found case law from the Connecticut Supreme Court that has expressly held that the power of the Court to issue a capias directing an arrest of a witness is "ordinarily conditioned on the issuance of a subpoena." *Burley v. Davis*, 132 Conn. 631, 637 (1946) (affirming a trial court decision declining to issue a capias after the defendant's attorney excused a witness from trial attendance without asking the plaintiff's attorney if he wished to call her on rebuttal because she was not under subpoena).

Mr. Jones was not subpoenaed to his deposition. Thus, the Court lacks the authority to issue a capias for his arrest.

## II. The Plaintiffs have failed to file a motion to compel Alex Jones to attend his deposition, which renders their motion for a capias untimely.

The Plaintiffs have not formally filed a motion to compel Mr. Jones to comply with any lawfully issued court order or obligation. Thus, their motion for a capias is untimely and should be denied as such.

As discussed above, the Plaintiffs did not subpoena Mr. Jones to his deposition. Instead, they used the customary and ordinary conventions of cooperative litigation established by Practice Book § 13-27 to coordinate his deposition. The undersigned cooperated as officers of the court should. Intervening circumstances have now arisen that has rendered Mr. Jones' cooperation hazardous to his health in the opinion of a physician who has personally examined him – so hazardous that the physician recommended that he visit the emergency room.

While Mr. Jones appears not to have initially complied with his physician's orders, there is every indication that he has finally assented to do so, and his compliance necessitated his non-attendance at a deposition arranged by cooperation, not the adversarial compulsion of a subpoena. The Plaintiffs' attempt to procure his attendance and his arrest have no basis in the procedures established by the Practice Book.

While the undersigned can certainly appreciate their frustration at the eleventh-hour postponement of Mr. Jones' deposition, the fact remains crystal clear: Mr. Jones was never subject to a compulsory obligation, and he has yet to receive one in the form of a subpoena. Thus, the Plaintiffs' motion for an order cannot be properly considered to be a motion to compel, and their attempt to procure his arrest is untimely.

## III. Practice Book § 13-28(f) clearly requires parties seeking a capias as to a foreign deponent to seek it in the district in which the deponent resides.

Even assuming that the notice of deposition to Mr. Jones operates as a subpoena within Connecticut law or that a subpoena is not required because he is a party, the Court still lacks the authority to issue a capias for Mr. Jones.

Conn. Gen. Stat. § 52-148c and Practice Book § 13-28 establish procedures by which an out-of-state witness's deposition may be taken. The party wishing to take the deposition is required to obtain a commission for an out-of-state subpoena, which then enables the party to obtain a subpoena in the proposed deponent's state to compel the attendance of the deponent in his state. *Struckman v. Burns*, 205 Conn. 542, 552 (1987). The Plaintiffs never sought a commission to take Mr. Jones's deposition, and the Court never issued one. Assuming *arguendo* that this procedural requirement is unilaterally dispensable at the Plaintiffs' whim, no subpoena ever issued in Texas for Mr. Jones' deposition.

Again assuming *arguendo* that this procedural requirement is equally dispensable on a unilateral basis, Practice Book § 13-28(f) requires the Plaintiffs to seek the capias from the jurisdiction in which the subpoena is issued, which would be Texas in this case. *Noll v. Hartford Roman Catholic Diocesan Corp*. 2008 WL 4635591, at *11 (CT Super. Ct. Sept. 26, 2008).

The facts of *Noll* are particularly instructive. One of the defendants lived in Virginia and allegedly attempted to avoid his deposition. The plaintiff obtained a commission for an out-of-state subpoena and obtained one from a Virginia. The defendant did not attend the Virginia deposition, and the *Noll* court declined to issue the capias because it has not issued the subpoena.

Making all of the previous assumptions *arguendo*, the Court did not issue a subpoena for Mr. Jones, and it could have only issued a commission. Thus, like the *Noll* court and under Practice Book § 13-28(f), the Court lacks the authority to issue a capias for Mr. Jones under the current procedural posture.

## Conclusion

For the foregoing reasons, the Jones Defendants ask the Court to deny the Plaintiffs' motion for a capias. Additionally, they ask the Court for an additional opportunity to be heard regarding the other sanctions that the Plaintiffs have requested as a matter of due process and fundamental fairness. The issues that the Court asked them to address in a matter of little over 2 hours are complex, and the time constraints did not afford the Jones Defendants an opportunity to be heard on those matters.

Dated: March 23, 2022

Respectfully Submitted,

Alex Jones,
Infowars, LLC;
Free Speech Systems, LLC;
Infowars Health, LLC; and
Prison Planet TV, LLC

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## CERTIFICATION

This is to certify that a copy of the foregoing has been emailed and/or mailed, this day, postage prepaid, to all counsel and pro se appearances as follows:

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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of Hartford.

William NOLL
v.
The HARTFORD ROMAN CATHOLIC DIOCESAN CORPORATION et al.

No. HHDX04CV024034702S.
|
Sept. 26, 2008.

**Opinion**

ROBERT B. SHAPIRO, Judge.

***1** The court issues this memorandum of decision concerning (1) the plaintiff's motion for sanctions (# 319), which seeks sanctions against defendant Stephen Foley and his counsel, as a result of Foley's failure to appear for a video deposition in Virginia on August 7, 2008; and (2) Foley's motion for sanctions (# 304), which seeks sanctions against the plaintiff's counsel for disclosing Foley's residence address in a pleading filed with the court. The court held a hearing in connection with these motions on September 15, 2008.

After consideration of the evidence presented by the parties, their written submissions, and their oral arguments, for the reasons stated below, the plaintiff's motion for sanctions is granted in part and denied in part. The court previously issued an interim order concerning Foley's motion, in which it ordered redactions of references to Foley's residence address. The remainder of Foley's motion for sanctions is denied.

*I*

*Background*

In this matter, the plaintiff alleges that he was sexually abused by defendant Stephen Foley, a Catholic priest, when the plaintiff was a minor child of about fifteen years old. By agreement of all parties, on June 10, 2008, the court granted the defendant Hartford Roman Catholic Diocesan Corporation's (Archdiocese) motion to modify the scheduling order (# 285). According to the court's order, depositions of all fact witnesses were to be completed by August 15, 2008.

The extensive procedural history of the plaintiff's effort to take Foley's deposition in this matter is set forth below. By Ruling dated May 5, 2008 (# 278), the court granted the plaintiff's motion for issuance of commission to take Foley's deposition in Virginia, for trial testimony, since he resides outside of Connecticut. Practice Book § 13-31(a)(4) permits the use at trial of the deposition of a person who is out of the state.

A similar motion, which also sought Foley's out of state deposition for use as trial testimony, was granted by the court (Tanzer, J.) in *F. Glenn Sutherland v. The Hartford Roman Catholic Diocesan Corporation,* Docket No. HHD X04 CV 02 4034736 ("*Sutherland* "). This court is familiar with that matter, having issued memoranda of decisions and a trial management order concerning it.

Code of Evidence § 2-2(b) provides that "[t]he court may take judicial notice without a request of a party to do so. Parties are entitled to receive notice and have an opportunity to be heard for matters susceptible of explanation or contradiction, but not for matters of established fact, the accuracy of which cannot be questioned." "There is no question that the trial court may take judicial notice of the file in another case, whether or not the other case is between the same parties." (Internal quotation marks omitted.) *Jewett v. Jewett,* 265 Conn. 669, 678 n. 7, 830 A.2d 193 (2003).

The court takes judicial notice of parts of the court's file in *Sutherland.* That case involved the same defendants, the same plaintiff's counsel and the same defense counsel.

***2** There, the plaintiff did not learn that Foley had moved out of state, and could not be subpoenaed to attend the trial, until just before the scheduled commencement of the presentation of evidence. In *Sutherland,* the plaintiff filed a motion for a commission to take Foley's deposition by videotape in Virginia, for use at trial, dated February 27, 2008 (# 336). In a reply (# 337), paragraph 8, concerning his motion for a continuance of the trial, counsel for the plaintiff stated that, on February 27, 2008, he learned for the first time that Foley was not living in Connecticut and was in Virginia. The motion for commission was granted by Judge Tanzer on February 28, 2008.

  

At a court appearance on March 4, 2008, Foley's counsel represented to the court that Foley agreed to meet the *Sutherland* plaintiff's process server to accept a deposition subpoena. Later on March 4, 2008, Foley failed to appear at the Virginia lawyer's office where it was agreed that he would accept service of the subpoena. See affidavit of James Jones, plaintiff's Exhibit M. The effort to depose Foley in that case was not pursued further since *Sutherland* was settled on the next day, March 5, 2008.

By motion for protective order filed in this case, dated May 22, 2008 (# 283), Foley sought an order preventing the plaintiff and his counsel from serving a deposition subpoena at Foley's residence. Foley again offered to accept in-hand service of the subpoena, "at a neutral location."

"General Statutes 52-148c allows a party to apply to the court for a commission to take the deposition of an out-of-state witness. Once the commission is granted by the court in this state, a subpoena can be obtained in the proposed deponent's state to force the deponent to attend a deposition in his state." *Struckman v. Burns,* 205 Conn. 542, 552, 534 A.2d 888 (1987). Rule 4:5(a) of the Rules of the Supreme Court of Virginia states that "[t]he attendance of witnesses may be compelled by subpoena."

In its May 30, 2008 order (# 288), the court ruled that the determination as to whether Foley may be protected from service of a subpoena in Virginia at his residence was a question to be addressed by the Virginia courts. See *Fairbanks American, Inc. v. American Home Assurance Co.,* Superior Court, judicial district of Fairfield at Bridgeport, Docket No. CV 88 0248356 (January 24, 1992, Lewis, J.) [5 Conn. L. Rptr. 470] (court determined that the New York courts would have to resolve an issue relating to the issuance of a subpoena to compel two witnesses to attend depositions in New York).

In addition, in its May 30, 2008 order, the court stated that "Foley may seek relief from the courts in Virginia concerning the service of a subpoena there. See *Schwartz v. Commonwealth,* 45 Va.App. 407, 450, 611 S.E.2d 631 (2005)." Accordingly, the court declined to decide the issue concerning where the subpoena may be served. See *Cassinelli Brothers Construction Co. v. Gray,* Superior Court, judicial district of Stamford-Norwalk at Stamford, Docket No. CV95 0142662 (May 9, 1996, Hickey, J.) (16 Conn. L. Rptr. 629).

***3** Foley was served with a subpoena at his residence in Virginia on May 31, 2008. The plaintiff sought to take his deposition on June 5, 2008. See Plaintiff's Exhibit I (affidavit of Raymond J. Wachter, process server, and copies of related documents). His counsel's letter, dated June 3, 2008, acknowledged receipt of notice and of the subpoena. See Plaintiff's Exhibit J.

Foley filed a second motion for protective order concerning his deposition (# 290), asserting that the length of notice was inadequate and that his attorneys were unable to adjust their calendars in order to be able to attend a deposition in Virginia on short notice. This motion was not adjudicated since counsel for the parties reached an agreement, that Foley's deposition would occur in Virginia on August 7, 2008, one of the dates suggested by his Connecticut counsel on June 17, 2008. See Exhibit L (facsimile from co-defendant's counsel, dated June 17, 2008). As noted above, this agreed-to date was within the court-ordered schedule for the completion of fact witness depositions, which were to be completed by August 15, 2008. Thus, Foley had over six weeks notice as to when he would be required to appear to be deposed.

Over one month later, on July 22, 2008, Foley filed a third motion for protective order (# 295), seeking to prevent his deposition from going forward on August 7, 2008, the previously agreed-upon date. Therein, he claimed that plaintiff's counsel had attempted to contact him directly, referring to alleged events which had occurred more than three weeks before the date of the motion, in June 2008, and referring to Foley's pending grievance against plaintiff's counsel, which had been referred to the New London, Connecticut grievance panel.

Foley's third motion for a protective order was brought to the court's attention by request for expedited adjudication filed by the plaintiff on Friday, August 1, 2008 (# 299). Foley filed a reply, dated Monday, August 4, 2008 (# 302), to the plaintiff's objection to his motion for protective order. In a memorandum in support of his reply, also dated August 4, 2008 (# 303), page 4, Foley's counsel stated, "There is ample time to depose Foley for trial purposes. The evidentiary portion of the trial of this matter is not scheduled to commence until March 2009." No reference was made to Foley's health as a reason why the August 7, 2008 deposition should not go forward.

By order dated Tuesday, August 5, 2008 (# 308), the court denied Foley's third motion for protective order, since good cause had not been shown to prevent the deposition from

  

going forward. In view of the fact that Foley's deposition was scheduled to occur on Thursday, August 7, 2008, the court sent this order to the parties by mail and by facsimile.

On Wednesday, August 6, 2008, with his deposition scheduled to occur the next day, Foley filed his fourth motion for a protective order (# 310), accompanied by a request for expedited adjudication (# 311), which stated that Foley's "deposition is scheduled for 8/7/08 in Virginia. If the order is granted or denied, appropriate travel arrangements will need to be made." Foley's counsel offered no explanation as to why arrangements for travel to Virginia had not been made well in advance, since, as discussed above, counsel agreed, several weeks before, in June 2008, to schedule the August 7, 2008 deposition in Virginia.

***4** In the fourth motion for protective order, Foley again sought to prevent the plaintiff from deposing him, now on "alternative grounds." His counsel presented two letters from Foley's medical providers stating that he was physically unable to participate in a deposition. These letters are dated June 10, 2008 (physician stated that Foley had persistent fatigue and night sweats; history of cancer; a chronic skin infection; and "will be unable to participate in a deposition at this time"); and June 18, 2008 (different physician stated that Foley was being treated for a skin infection, which was aggressive, recurring, and resistant to therapy; that his health issues may pose limitations on his daily functions and may prevent him from certain duties, including deposition, for the near future, until the skin issue is resolved). These conclusory reports did not specify why, even with accommodation, Foley could not be deposed.

In the fourth motion for protective order, page 1, Foley's counsel stated that, "[t]he undersigned waited to see if Foley's condition would improve. According to Foley, it has not." Thus, Foley's counsel acknowledged that she was in possession of the June 2008 correspondence concerning Foley's health well in advance of the filing of his fourth motion for protective order, which was only brought to the opposing parties' and the court's attention after Foley's counsel received the adverse ruling from the court, dated August 5, 2008, concerning Foley's third motion for a protective order. Foley and his counsel only raised his health as an issue which should prevent his deposition after learning that the court had denied his third motion for a protective order.

Later on the same day, August 6, 2008, Foley also submitted an affidavit, dated August 6, 2008, in which he stated that he was still ill and that he continues to see his doctors on a regular basis for treatment of the conditions listed in his doctor's letters. No contemporaneous letters from physicians were presented.

While this motion was before the court on August 6, 2008, counsel sent each other correspondence, of which the court became aware only after reviewing the plaintiff's motion for sanctions. Foley's counsel sent a letter to other counsel asking them not to go forward with the deposition since the court officer assigned to this docket had informed her that the court would not rule on Foley's fourth motion for protective order until opposing parties had an opportunity to respond. An attorney in plaintiff's counsel's office replied that he had filed an objection to the motion, which was presently before the court; that the deposition would go forward as planned; that plaintiff's counsel was on an airplane to Virginia in order to conduct the deposition; and that Foley and Foley's counsel were expected to attend. Foley's counsel replied that, pursuant to Practice Book § 13-5, Foley's deposition was stayed until the court ruled on the motion for protective order which she had filed that morning. She stated that neither she nor Foley would be present at the deposition on August 7, 2008.

***5** After considering the fourth motion for protective order and the plaintiff's objection thereto, the court issued an order, on August 6, 2008, which was then sent by facsimile on that date to counsel for the parties, and which stated: "1. The issue raised by the defendant's motion for protective order, as to whether he must appear for a deposition in Virginia, is for the Virginia courts. See this court's May 30, 2008 ruling on defendant Foley's previous motion for protective order (# 288). 2. The court declines to consider, at this time, on an expedited basis, the relief requested in the plaintiff's objection, which seeks a contempt finding, a default, and an award of attorneys fees." Thus, the court's order completely disposed of the fourth motion for a protective order in this court. Subsequently, on August 6, 2008, plaintiff's counsel sent another letter to Foley's counsel, again advising that the deposition would go forward, and attaching travel options.

Notwithstanding the court's rulings, Foley never sought relief in the Virginia courts. On August 7, 2008, plaintiff's counsel appeared in Herndon, Virginia, for the video deposition of Foley. Neither Foley nor his counsel appeared and plaintiff's counsel was unable to reach Foley's counsel by phone. See

  

Transcript of August 7, 2008 deposition (Plaintiff's Exhibit U).

Additional references to the background of this matter are set forth below.

*II*

*Plaintiff's Motion For Sanctions*

*A*

*Default*

In his motion for sanctions, as amended, the plaintiff requests that the court hold Foley in contempt of court order, and seeks a default judgment, payment of attorneys fees and costs, a capias, and an order that Foley appear for a video deposition in Connecticut on a date certain. In his reply (# 331), the plaintiff asserts that, based on the correspondence and pleadings signed by Foley's counsel, it is clear that Foley failed to appear at his deposition at his counsel's direction. The plaintiff seeks sanctions against Foley and his Connecticut counsel.

Practice Book § 13-14(a) provides, in relevant part, "If any party ... has failed to appear and testify at a deposition duly noticed pursuant to this chapter, or has failed otherwise substantially to comply with any other discovery order made pursuant to Sections 13-6 through 13-11, the judicial authority may, on motion, make such order as the ends of justice require." Such order may include the entry of a nonsuit or default against the party failing to comply and the award to the discovering party of the costs of the motion, including a reasonable attorneys fee. See Practice Book § 13-14(b)(1) and (b)(2).

"[A] court may, either under its inherent power to impose sanctions in order to compel observance of its rules and orders, or under the provisions of § 13-14, impose sanctions, including the sanction of dismissal." *Millbrook Owners Association, Inc. v. Hamilton Standard,* 257 Conn. 1, 14, 776 A.2d 1115 (2001). "The decision to enter sanctions ... and, if so, what sanction or sanctions to impose, is a matter within the sound discretion of the trial court." (Internal quotation marks omitted.) *Evans v. General Motors Corp.,* 277 Conn. 496, 523, 893 A.2d 371 (2006).

***6** "In order for a trial court's order of sanctions for violation of a discovery order to withstand scrutiny, three requirements must be met. First, the order to be complied with must be reasonably clear ... Second, the record must establish that the order was in fact violated. Third, the sanction imposed must be proportional to the violation." (Internal quotation marks omitted.) *Wexler v. DeMaio,* 280 Conn. 168, 179, 905 A.2d 1196 (2006).

Similar requirements apply when considering an order of sanctions for violation of the rules of practice concerning discovery. See *E.D.H., Inc. v. Cole,* Superior Court, judicial district of Tolland, Complex Litigation Docket at Tolland, Docket No. X07 CV 02 0081527 (July 24, 2003, Sferrazza, J.) (citing *Millbrook Owners Association, Inc. v. Hamilton Standard, supra,* 257 Conn. at 17-18, 776 A.2d 1115).

The rules under which discovery may obtained by deposition are clear. "The giving of the notice [of deposition in accordance with now Practice Book § 13-27], unless modified by the court, constitutes an order to the deponent to appear at the time and place designated in the notice and to submit to examination and cross-examination as permitted at trial." (Emphasis omitted; internal quotation marks omitted.) *Cahn v. Cahn,* 225 Conn. 666, 688, 626 A.2d 296 (1993).

In considering the factors set forth in *Wexler v. DeMaio, supra,* the court finds that the court's orders are clear and that the parties agreed that Foley would be deposed in Virginia on August 7, 2008. The court granted the plaintiff's motion for a commission to take Foley's deposition in Virginia and the parties, including Foley, agreed to a schedule for the completion of fact witness depositions, which was adopted in the court's modified scheduling order. Here, also, Foley was served with a subpoena which required his presence at the deposition, and the parties agreed upon a date when that was to occur.

As to the second factor, whether the court's orders were in fact violated, it is evident that a violation has occurred. The court addresses Foley's arguments in the order in which they appear in his memorandum in support of his objection to the plaintiff's motion for sanctions (# 329).

First, Foley misstates the applicable law, by stating, in his memorandum, page 1, "[p]ursuant to Practice Book Sec. 13-5, the filing of a protective order effectively stayed Foley's deposition until a ruling was made by the court either granting

  

or denying the [fourth] motion [for protective order]. See also *Cahn v. Cahn,* 225 Conn. 666, 626 A.2d 296 (1993)."

When a deponent has been given reasonable notice of deposition, the mere filing of a motion for a protective order does not stay the deposition. Practice Book § 13-5 contains no such provision. To the contrary, Practice Book § 13-5 provides, in relevant part; "Upon motion by a party from whom discovery is sought, and for good cause shown, the judicial authority *may* make any order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had ..." (Emphasis added.)

***7** Foley's reading of *Cahn v. Cahn, supra,* is untenable. *Cahn* also does not hold that the filing of a motion for a protective order stays a deposition concerning which reasonable notice has been provided. There, the Supreme Court stated, concerning depositions, "[a]ll questions, including those objected to, are to be answered ... unless the objecting party procures from the court a protective order precluding or limiting the scope or disclosure of discovery ... The issue before the Appellate Court and this court, however, [was] whether, in the circumstances of this case, a notice of deposition subsequently ruled unreasonable because the notice did not allow the plaintiff to be heard on his motion for protective order permits a court to exclude the deposition testimony from the trial." (Citation omitted; footnote omitted; internal quotation marks omitted.) *Id.,* 225 Conn. at 672, 626 A.2d 296.

In *Cahn,* "[t]he trial court ruled that the notice given for these depositions was unreasonable because the notice did not provide the plaintiff with sufficient opportunity to have his motion for protective order heard." *Id.,* at 677-78, 626 A.2d 296. The instant case does not involve a situation where "the mere filing of a motion for protective order made the notice not reasonable ..." *Id.,* 225 Conn. at 678, 626 A.2d 296. The facts here are quite different, and involve the opposite, reasonable notice, and an agreed-on date for the deposition.

Here, although Foley sought a protective order against the taking of his deposition, the court never granted his motions. In contrast to the situation in *Cahn,* where inadequate notice of the depositions prevented the plaintiff from being heard on his motion for protective order, here the parties *agreed* on the date for Foley's deposition long in advance thereof and Foley had ample opportunity to seek a protective order and did so, unsuccessfully.

In addition, the court twice stated, in separate orders, that the Virginia court was the appropriate place to seek relief concerning the requirement that he appear for his deposition. He never did so. According to the parties' submissions, no relief was sought by Foley in the Virginia courts.

The court is also unpersuaded by Foley's unsupported statement in his memorandum, page one, that "[b]y neither granting nor denying Foley's [m]otion for a[p]rotective [o]rder, pursuant to *Cahn,* the deposition was effectively stayed." Foley does not provide a citation to *Cahn* in which the Supreme Court so held. As stated above, *Cahn* does not support Foley's argument. This court's August 6, 2008 ruling disposed of the fourth motion for protective order and did not grant Foley's motion. Foley did not obtain a protective order either from this court or in Virginia. He had no lawful excuse for not appearing for his deposition.

Second, Foley's argument that the plaintiff's motion for sanctions should be heard by the Virginia courts is unfounded. This matter is pending on this court's docket and is scheduled for trial in this court. This court has jurisdiction over the parties to enforce its orders and to compel parties to obey its rules. As discussed above, Foley did not avail himself of the opportunity to seek a protective order in Virginia. The time to do so was before the deposition.

***8** The court notes also that, at the hearing, Foley's counsel made reference to a conversation she had with a court clerk in Virginia about the subpoena which was served on Foley. "We consistently have held that [a]nalysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly ... Where the parties cite no law and provide no analysis of their claims, we do not review such claims." (Internal quotation marks omitted.) *Knapp v. Knapp,* 270 Conn. 815, 823 n. 8, 856 A.2d 358 (2004). Accordingly, the court is not required to consider this belated challenge to the subpoena.

Third, the court is unpersuaded that Foley had good cause for filing his fourth motion for protective order on August 6, 2008. In his memorandum, page 2, n. 1, his counsel states that "[i]f Foley's condition had improved over the summer, it would not have been necessary to file the Protective Order."

  

The facts here reflect a belated filing of a new motion for protective order immediately after the denial of the previous, third motion for protective order. His counsel acknowledged having had information concerning Foley's health long before August 6, 2008; he could have sought a protective order on that ground in advance of raising it at the eleventh hour on August 6, 2008, on the eve of his deposition, just after his previous motion for protective order was denied.

The court is unpersuaded also by Foley's self-serving affidavit, to the effect that he remained ill and continued to be under the care of doctors. That assertion is belied by the absence of contemporaneous medical documentation. The previous documentation, discussed above, was dated in June 2008.

Equally unpersuasive is his counsel's representation that she reluctantly raised his health concerns at the last minute on August 6, 2008 because of their sensitive nature and because his health did not improve. Those assertions are undermined by her statements to the court, two days before, on August 4, 2008, in support of the third motion for a protective order, when she was in possession of information concerning Foley's health, that "the court has the authority to hold Foley's deposition in abeyance until the grievance is resolved" and that "[t]here is ample time to depose Foley for trial purposes." See Foley's August 4, 2008 memorandum (# 303), page 4. At that time, while the third motion for protective order was pending, she did not raise his health as an issue. Only immediately after that motion was denied did she attempt to do so. In not raising the health concerns when the third motion for protective order was being considered, she impliedly represented to the court that there was no impediment to the taking of Foley's deposition other than what she raised in connection with the third motion for protective order.

In analogous contexts, the appellate courts have criticized such conduct. "We have made it clear that we will not permit parties to anticipate a favorable decision, reserving a right to impeach it or set it aside if it happens to be against them, for a cause which was well known to them before or during the trial. *Krattenstein v. G. Fox & Co.,* 155 Conn. 609, 616, 236 A.2d 466 (1967) ... The plaintiff's attempt to manipulate the arbitration process by reserving objection until after the announcement of the arbitral award is precisely the kind of conduct we discountenanced in *Krattenstein v. G. Fox & Co., supra.* We will not reward such conduct here." (Internal quotation marks omitted.) *Shore v. Haverson Architecture And Design, P.C.,* 92 Conn.App. 469, 476-77, 886 A.2d 837 (2005), cert. denied, 277 Conn. 907, 894 A.2d 988 (2006).

***9** Here, Foley's counsel attempted to unfairly manipulate the court process. Her attempt to use the fourth motion for a protective order, and Practice Book § 13-5, as "automatic" escape mechanisms, based on information which was previously in her possession, in order to prevent Foley from having to be deposed, cannot be countenanced.

"[T]he court's discretion should be exercised mindful of the policy preference to bring about a trial on the merits of a dispute whenever possible and to secure for the litigant his day in court ... The design of the rules of practice is both to facilitate business and to advance justice; they will be interpreted liberally in any case where it shall be manifest that a strict adherence to them will work surprise or injustice ... Rules are a means to justice, and not an end in themselves ... Our practice does not favor the termination of proceedings without a determination of the merits of the controversy where that can be brought about with due regard to necessary rules of procedure ... Therefore, although dismissal of an action is not an abuse of discretion where a party shows a deliberate, contumacious or unwarranted disregard for the court's authority; *Fox v. First Bank,* 198 Conn. 34, 39, 501 A.2d 747 (1985); see also *Pavlinko v. Yale-New Haven Hospital,* [192 Conn. 138, 145, 470 A.2d 246 (1984) ] (dismissal proper where party's disobedience intentional, sufficient need for information sought is shown, and disobedient party not inclined to change position); the court should be reluctant to employ the sanction of dismissal except as a last resort ... [T]he sanction of dismissal should be imposed only as a last resort, and where it would be the only reasonable remedy available to vindicate the legitimate interests of the other party and the court." (Citations omitted; internal quotation marks omitted.) *Millbrook Owners Association, Inc. v. Hamilton Standard, supra,* 257 Conn. at 16-17, 776 A.2d 1115. "The same principles are applicable to the entry of a default judgment." *Evans v. General Motors Corp., supra,* 277 Conn. at 524, 893 A.2d 371.

"In determining the proportionality of a sanction to a violation, we have in the past considered the severity of the sanction imposed and the materiality of the evidence sought; whether the violation was inadvertent or wilful; ... and whether the absence of the sanction would result in prejudice to the party seeking the sanction." (Citations omitted.) *Forster v. Gianoppoulos,* 105 Conn.App. 702, 711, 939 A.2d 1242 (2008). Here, in contrast to *Forster,* where the trial court's

entry of a default judgment was found not to be an abuse of discretion, the information sought, Foley's testimony, is material to the determination of liability. See *id.,* at 711, 939 A.2d 1242.

"To establish that the violation of an applicable court order was wilful, the claimant must prove that the violation was committed intentionally, with actual or constructive knowledge of the order and its contents. It thus has been observed that a genuine, good-faith dispute about the true meaning of a court order may sometimes defeat a claim of wilfulness, at least where it misleads the alleged contemnor to honestly believe that his challenged conduct is in fact compliant with that order ... [T]he rule is well established that unless and until a court order is modified or successfully challenged by proper procedure, it is presumed to be valid and must be obeyed." (Citations omitted.) *Keeney v. Buccino,* Superior Court, judicial district of Hartford at Hartford, Docket No. CV 93 0530766 (August 31, 2004, Sheldon, J.), affirmed, 92 Conn.App. 496, 885 A.2d 1239 (2005). "Intention is an inference of fact ..." (Internal quotation marks omitted.) *Heyman v. CBS, Inc.,* 178 Conn. 215, 228, 423 A.2d 887 (1979).

***10** Here, there is no good faith dispute about the meaning of the court's orders or the parties' agreement that Foley's deposition would occur on August 7, 2008. Instead of timely complying, Foley failed to appear for his deposition "[T]he only explanations or excuses ... offered for [his] challenged conduct are either legally untenable or factually unsupported on the record before the Court." *Keeney v. Buccino, supra,* Superior Court, Docket No. CV 93 0530766.

The record before the court shows that it was agreed that Foley's deposition was duly noticed to occur on August 7, 2008 and that he and his counsel failed to appear. On that date, plaintiff's counsel appeared for the deposition; a court reporter was in attendance as well. Also, on that date, the plaintiff's counsel attempted to, but could not reach Foley's counsel by phone.

Based on the record, including the statements of Foley's counsel, as discussed above, the court finds that Foley wilfully failed to appear for his duly noticed deposition.

The plaintiff has timely sought sanctions against Foley, by filing his motion for sanctions well in advance of February 16, 2009, the date scheduled for jury selection. The motion for sanctions was not presented "on the eve of trial." *U.B. Vehicle Leasing, Inc. v. Davis,* 90 Conn.App. 206, 211, 876 A.2d 1222 (2005).

"Our rules of practice provide guidelines to facilitate the discovery of information relevant to a pending suit. The primary purpose of a deposition taken pursuant to these provisions is discovery." *Sanderson v. Steve Snyder Enterprises, Inc.,* 196 Conn. 134, 139, 491 A.2d 389 (1985). As the Supreme Court recently reiterated, the "rules of discovery are designed to make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent." (Internal quotation marks omitted.) *Wexler v. DeMaio, supra,* 280 Conn. at 188-89, 905 A.2d 1196. Here, as discussed above, the central purpose of Foley's deposition was to secure his trial testimony.

Foley's alleged misconduct when the plaintiff was a child is a central part of the plaintiff's claims, against both Foley and the Archdiocese. The court finds that the plaintiff is prejudiced in the presentation of his case in chief by not having testimony by Foley to present at trial.

In the exercise of the court's discretion, since Foley wilfully failed to appear for his deposition, which was noticed in advance of trial and in compliance with the agreed-to scheduling order, and since the plaintiff has been prejudiced thereby, a default is warranted as to Foley. This sanction is warranted also to encourage Foley to comply with this court's order that he appear in Connecticut to be deposed, as discussed below. In so doing, the prejudice suffered by the plaintiff would be mitigated. In the event that he is deposed in compliance with the court's order, the court will consider vacating the default.

***11** The court declines to enter a default judgment against Foley. The assessment of the plaintiff's claim for damages against Foley must await an evidentiary presentation to and adjudication by the finder of fact at trial.

*B*

*Capias*

Since the subpoena was issued in Virginia, not in Connecticut, this court may not issue a capias. See Practice Book § 13-28(f), which pertains to a subpoena issued in this state. [1]

  

Here, after the court granted the motion for a commission to take the deposition in Virginia, the subpoena was issued there. See *Cassinelli Brothers Construction Co. v. Gray,* Superior Court, judicial district of Stamford-Norwalk at Stamford, Docket No. CV95 0142662 (May 9, 1996, Hickey, J.) (16 Conn. L. Rptr. 629).

*C*

*Deposition In Connecticut*

"Practice Book § 13-29(c)(2) governs the place of deposition of a defendant who is not a resident of this state. The import of [§ 13-29(c)(2) ] read as a whole is based on the rationale that a defendant should generally not be required to finance the cost of litigation against him. Thus, [a] nonresident defendant ... may usually insist that his deposition be taken only where he resides or does business. These rules have sometimes been relaxed, however, to accommodate special circumstances of the parties ... The court has discretion to compel a nonresident defendant to give his deposition 'at such other place as is fixed by order of the judicial authority.' See Practice Book 13-29(c)(2). No hard rule should be set to govern when the court should exercise its discretion to order an out-of-state defendant to appear in Connecticut ... The court in exercising its discretion must do so in a manner which accommodates the special circumstances of each case." (Citations omitted; internal quotation marks omitted.) *Moorman v. Khan,* Superior Court, judicial district of Fairfield at Bridgeport, Docket No. CV01 0382045 (December 10, 2004, Gilardi, J.) (38 Conn. L. Rptr. 380). One factor to be considered is that "the defendant was personally served in Connecticut with the writ and complaint while he or she was a resident and thereafter voluntarily moved out of Connecticut ..." *Id.*

Here, the plaintiff made significant efforts to depose Foley in Virginia, and expended money and time in order to do so, but Foley willfully failed to appear. As discussed above, his testimony is central to the plaintiff's case in chief. In the exercise of its discretion, the court orders Foley to attend his deposition, to be held in Connecticut, on a date certain to be agreed to by the parties, and no later than October 30, 2008. In view of the monetary sanctions discussed below, the court declines to require Foley or his counsel also to pay for the costs of his Connecticut deposition. Of course, he is responsible for paying for his own travel expenses.

*D*

*Fees and Costs*

As stated above, the court is empowered to award sanctions in the event of a violation of its rules and orders. Pursuant to Practice Book § 13-14(a), the court has the discretion to "make such order as the ends of justice require" for the failure to appear and testify at a deposition duly noticed. Also, "[t]he trial court has the authority to regulate the conduct of attorneys and has a duty to enforce the standards of conduct regarding attorneys." (Internal quotation marks omitted.) *Bergeron v. Mackler,* 225 Conn. 391, 397, 623 A.2d 489 (1993).

***12** "[T]he trial court has broad discretion to fashion and impose sanctions for failure to comply with the rules of discovery ..." (Citations omitted.) *Northeast Savings, F.A. v. Plymouth Commons Realty Corp.,* 229 Conn. 634, 638, 642 A.2d 1194 (1994).

For the reasons stated above, sanctions are ordered against Foley and his counsel. His counsel's attempt to manipulate the process, discussed above, warrants sanctions. They are ordered to pay reasonable attorneys fees and costs to the plaintiff concerning the attempt to take Foley's deposition in Virginia, and concerning the instant motion. The plaintiff has requested the reasonable sum of $1,768.96 for travel expenses (airfare, hotel, taxi). The court is unpersuaded by Foley's arguments that the amounts incurred for these items are not reasonable.

The plaintiff also requested the sum of $587.50 for transcript costs and an amount for video to be determined. It is unclear why the brief deposition transcript for August 7, 2008 would cost the sum requested. The plaintiff is directed to provide additional documentation for these expenses. In addition, the plaintiff is directed to provide evidence in support of his claim for attorneys fees. These are to be provided by October 10, 2008, and any response by Foley is to be filed by October 24, 2008. A new request for adjudication shall be filed as well. In the interim, Foley and his counsel are ordered to reimburse the plaintiff for the travel expenses, in the amount of $1,768.96, within thirty days from the date of this memorandum of decision.

  

*E*

*Contempt*

The decisional law concerning contempt findings is well-established. "Contempt is a disobedience to the rules and orders of a court which has power to punish for such an offense." (Internal quotation marks omitted.) *In Re Leah,* 284 Conn. 685, 692, 935 A.2d 1021 (2007). "The interests of orderly government demand that respect and compliance be given to orders issued by courts possessed of jurisdiction of persons and subject matter. One who defies the public authority and willfully refuses his obedience, does so at his peril.' *United States v. United Mine Workers,* 330 U.S. 258, 303, 67 S.Ct. 677, 91 L.Ed. 884 (1947). '[A]n order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings. *Id.,* at 293.' " *Rocque v. Design Land Developers of Milford, Inc.,* 82 Conn.App. 361, 366, 844 A.2d 882 (2004).

Practice Book § 1-13A states, "Any person ... disobeying any order of a judicial authority in the course of any judicial proceeding may be adjudicated in contempt and appropriately punished ... Contempt may be either criminal or civil."

Practice Book § 1-21A provides for a coercive and nonpunitive civil contempt order where the dispute is, as here, between private litigants. "The violation of any court order qualifies for criminal contempt sanctions. Where, however, the dispute is between private litigants and the purpose for judicial intervention is remedial, then the contempt is civil, and any sanctions imposed by the judicial authority shall be coercive and nonpunitive, including fines, to ensure compliance and compensate the complainant for losses." Practice Book § 1-21A. See *Rizzuto v. Davidson Ladders, Inc.,* 280 Conn. 225, 241, 905 A.2d 1165 (2006).

***13** "Contempts of court may be classified as either direct or indirect, the test being whether the contempt is offered within or outside the presence of the court ... [A] finding of indirect civil contempt must be established by sufficient proof that is premised upon competent evidence presented to the trial court in accordance with the rules of procedure as in ordinary cases." (Internal quotation marks omitted.) *Legnos v. Legnos,* 70 Conn.App. 349, 352, 797 A.2d 1184, cert. denied, 261 Conn. 911, 806 A.2d 48 (2002).

The court must first "resolve the threshold question of whether the underlying order constituted a court order that was sufficiently clear and unambiguous so as to support a judgment of contempt." *In Re Leah, supra,* 284 Conn. at 693, 935 A.2d 1021. Second, the court must then determine "whether the violation was wilful or excused by a good faith dispute or misunderstanding." *Id.,* at 694, 935 A.2d 1021.

"The contempt remedy is particularly harsh ... and may be founded solely upon some clear and express direction of the court ... One cannot be placed in contempt for failure to read the court's mind." (Internal quotation marks omitted.) *Sablocky v. Sablocky,* 258 Conn. 713, 718, 784 A.2d 890 (2001).

"In a civil contempt proceeding, the movant has the burden of establishing, by a preponderance of the evidence, the existence of a court order and noncompliance with that order." *Statewide Grievance Committee v. Zadora,* 62 Conn.App. 828, 832, 772 A.2d 681 (2001). "A finding of contempt is a question of fact ... To constitute contempt, a party's conduct must be willful ... Noncompliance alone will not support a judgment of contempt ... [T]he credibility of witnesses, the findings of fact and the drawing of inferences are all within the province of the trier of fact." (Internal quotation marks omitted.) *Keeney v. Buccino, supra,* 92 Conn.App. at 513, 885 A.2d 1239.

"Before finding a person in contempt for the wilful violation of a court order, the trial court must consider the circumstances and facts surrounding the violation ... The fact that the order had not been complied with fully, however, does not dictate that a finding of contempt must enter. It is within the sound discretion of the court to deny a claim for contempt when there is an adequate factual basis to explain the failure to honor the court's order." (Citation omitted; internal quotation marks omitted.) *In Re Daniel C.,* 63 Conn.App. 339, 369, 776 A.2d 487 (2001). "The inability of a party to obey an order of the court, without fault on his part, is a good defense to the charge of contempt ... The contemnor must establish that he cannot comply, or was unable to do so." (Internal quotation marks omitted.) *Keeney v. Buccino, supra,* 92 Conn.App. at 513-14, 885 A.2d 1239.

In addition, Practice Book § 13-14, which is entitled "Order for Compliance; Failure to Answer or Comply with Order," includes no reference to contempt. Practice Book § 13-14(b) lists a nonexclusive range of orders which may be entered. [2]

  

***14** The Supreme Court recently stated, in *Rizzuto v. Davidson Ladders, Inc., supra,* 280 Conn. at 240, 905 A.2d 1165, that; in certain circumstances § 13-14(b)'s "sanctions are of no use ..." Section 13-14 does not prevent a plaintiff from "mov[ing] for a finding of civil or criminal contempt; Practice Book § 1-21A ..." (Footnote omitted.) *Id.,* 280 Conn. at 241, 905 A.2d 1165. Here, the entry of the default has only limited purposes, since it does not provide what is sought, trial testimony. While payment of an award of reasonable attorneys fees and costs will reimburse the plaintiff for the costs incurred in attempting to depose Foley in Virginia and in pursuing the plaintiff's motion for sanctions, it also will not be a substitute for the trial testimony. See Practice Book § 13-14(b).

Based on the record, the court finds that Foley intentionally, and without justification, did not comply with the court's clear orders, including, after he was subpoenaed, the parties' agreement that the deposition occur on August 7, 2008. As discussed above, there were several court orders here: the order granting the commission; the agreement as to the date for the deposition after the initial notice of deposition was, by extension, an order of the court; and the court's orders concerning Foley's motion for protective orders. The record before the court is clear and convincing and warrants a finding of indirect civil contempt against Foley for his willful violations of court orders when he failed to appear to be deposed.

*III*

*Defendant's Motion For Sanctions*

Foley's motion for sanctions against the plaintiff's counsel for disclosing his residence address in a pleading seeks costs and attorneys fees and an order redacting references to his residence address from court documents. On September 12, 2008, the court issued an interim order, which ordered redactions to the referenced pleading and directed the parties to provide redacted copies concerning any other such references in public court documents.

The court finds that the disclosure which occurred was inadvertent and that no prejudice has been shown. See *State v. Respass,* 256 Conn. 164, 188, 770 A.2d 471 (2001). Sanctions are not warranted. Accordingly, the balance of Foley's motion for sanctions is denied.

*CONCLUSION*

For the reasons stated above, the court, after having duly considered the evidence, written submissions, and arguments presented by the parties, and the parties having had an opportunity to be fully heard, hereby orders:

The plaintiff's motion for sanctions is granted in part and denied in part. The court previously issued an interim order concerning Foley's motion for sanctions, in which it ordered redactions of references to Foley's residence address. The remainder of Foley's motion for sanctions is denied. In addition:

1. A default shall enter against defendant Stephen Foley.

2. Defendant Foley is ordered to attend his deposition, in Connecticut, to be completed by October 30, 2008.

***15** 3. Defendant Foley and his counsel are ordered to reimburse the plaintiff for travel costs incurred in connection with the Virginia deposition, as set forth above, within thirty days of the date of this memorandum of decision. As discussed above, the plaintiff may submit evidence as to other deposition costs, and evidence of attorneys fees incurred.

4. Defendant Foley is adjudged in indirect civil contempt. Defendant Foley may purge himself of this contempt by being deposed in Connecticut, as provided above in paragraph 2.

It is so ordered.

**All Citations**

Not Reported in A.2d, 2008 WL 4635591

## Footnotes

1 Section 13-28(f) provides, "[i]f any person to whom a lawful subpoena is issued under any provision of this section fails without just excuse to comply with any of its terms, the court before which the cause is pending, or any judge thereof, or, if the cause is pending in a foreign court, the court in the judicial district wherein the subpoenaed person resides, may issue a capias and cause the person to be brought before that court or judge, as the case may be, and, if the person subpoenaed refuses to comply with the subpoena, the court or judge may commit the person to jail until he or she signifies a willingness to comply with it."

2 Practice Book § 13-14(b) provides, "Such orders may include the following: (1) The entry of a nonsuit or default against the party failing to comply; (2) The award to the discovering party of the costs of the motion, including a reasonable attorneys fee; (3) The entry of an order that the matters regarding which the discovery was sought or other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order; (4) The entry of an order prohibiting the party who has failed to comply from introducing designated matters in evidence; (5) If the party failing to comply is the plaintiff, the entry of a judgment of dismissal."