

IN THE TWELFTH DISTRICT COURT OF APPEALS  
BROWN COUNTY, OHIO

State of Ohio, *ex rel.* Varnau

FILED  
COURT OF APPEALS  
:  
Petitioner

Case No. CA2009-02-10

Vs

AUG 13: 2009

Sheriff Wenninger

RESPONDENT  
TINA M. MERANDA  
COUNTY CLERK OF COURTS

RESPONDENT'S MOTION FOR A  
PROTECTIVE ORDER

Now comes the Respondent Sheriff Dwayne Wenninger (Wenninger) pursuant to Civil Rule 26(C) and through counsel, and moves that the Court issue a protective order that prevents the Petitioner Varnau (Varnau) from taking the deposition of the Respondent. The Respondent incorporates herein by reference the memorandum below.

Respectfully submitted,

  
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Gary A. Rosenhoffer 0003276  
and Patrick L. Gregory  
Attorneys for Respondent Wenninger  
302 E. Main Street  
Batavia, Ohio 45103  
(513) 732-0300

MEMORANDUM

A. Applicable Law

The manner, mode or regulation of discovery is a discretionary power of the court. *State ex rel. Daggett v. Gessaman*, (1973), 34 Ohio St.2d 55; See also, *Grange Mut. Cas. Co. v. Auxier, Adm.* (1983), CA1109-1119 (12<sup>th</sup> App.; Clermont Co. and citing *Gessaman, infra*). The broad discretion to regulate discovery proceedings extends to the issuance of protective orders. *Van.-Am. Ins. Co. v. Schiappa* (199), 132 Ohio App.3d 325 (7<sup>th</sup> App.). The method for obtaining an advance court determination so as to avoid the imposition of sanctions for failure to appear at a deposition is to

move for a protective order before the time for compliance is reached. *Dafco, Inc. v. Reynolds* (1983), 9 Ohio App.3d 457 (10<sup>th</sup> App).

B. Applicable Facts

On July 20, 2009, this Court issued an order extending a discovery cutoff date to August 10, 2009 with regard to issues related to Wenninger's motion to dismiss that has been converted to a motion for summary judgment. By correspondence received August 12, 2009, counsel for Wenninger received a notice from counsel for Varnau that gives notice of Varnau's intent to depose Wenninger on August 27, 2009. The notice for the deposition indicates that the purpose of the deposition is "...for use at trial and all purposes permitted by law." Wenninger suggests that, at this point, the deposition may not be taken for discovery purposes as discovery has closed. If the Court grants Wenninger's motion for summary judgment, there will be no trial and the deposition would be frivolous.


Wenninger respectfully moves for an order protecting him from appearance at the scheduled deposition or that otherwise suppresses or quashes the notice of deposition that has been served upon his counsel.

  
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Gary A. Rosenhoffer  
Attorney for Respondent Wenninger

CERTIFICATE OF SERVICE

I certify that a copy of this pleading was served by ordinary mail, postage prepaid on August 13, 2009 upon Thomas Eagle, Esq, Attorney for Varnau, 3386 N. State Route 123, Lebanon, Ohio 45036; and a copy was delivered to the offices of Tina Meranda, Brown County Clerk of Courts and the office of Brown County Prosecutor Jessica Little on August 10, 2009.

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Gary A. Rosenhoffer