



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant

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Civil Action No. 75-1996

MEMORANDUM OF POINTS AND AUTHORITIES

Presently pending before the Court is plaintiff's motion for an order requiring defendant to pay him a certain sum of money as his consultancy fee in this case. Defendant has made a number of arguments in opposition to the motion; indeed, defendant has appealed this Court's ruling that plaintiff is entitled to payment at the rate of \$75 per hour to the Court of Appeals, a move which forced plaintiff to cross-appeal. The Court of Appeals has, on motion by defendant, stayed the appeals until this Court resolves all pending motions.

Given this background, plaintiff feels it is necessary for him to further develop pertinent facts regarding the consultancy fee by deposing two persons who have personal knowledge of the circumstances concerning the consultancy agreement. The deposition of Daniel Metcalfe was originally scheduled to be taken on May 4, 1982, at plaintiff's home in Frederick, Maryland. At Mr. Metcalfe's request, the date and place of the deposition have been changed. In recognition of the fact that Mr. Metcalfe is a busy government official whose testimony is expected to consume an hour or less, and because he did not participate directly in the consultancy agreement with plaintiff, plaintiff will take Mr. Metcalfe's deposition at his own office on May 13, 1982.

The other person whose deposition has been noticed, Mrs. Lynne K. Zusman, was a principal participant in the consultancy arrangement. Indeed, she was the principal participant on the government's side, and on several occasions she met or talked with plaintiff and his counsel about it, and she represented the government when the matter was put before the court.

Plaintiff originally attempted service on Mrs. Zusman at the Department of Justice, but his counsel subsequently learned that she is now employed by the Department of Health and Human Services. Because plaintiff has not been able to obtain her home address (she did not return a call placed by plaintiff's attorney), she is being served a new subpoena duces tecum at her new office in the Humphrey Building in Southwest Washington, D.C. Her deposition is noted for May 14, 1982, at plaintiff's home in Frederick, Maryland. Plaintiff anticipates that objection will be made to the place of deposition, among other things; accordingly, he has moved the Court for an order designating Frederick as the place of deposition.

Plaintiff has noted Mrs. Zusman's deposition for his home in Frederick, Maryland because it is unwise for him to travel to the Washington, D.C. area to participate in her deposition. Plaintiff's health, as is well-known to defendant the Court, is not good. He suffers, among other things, from phlebitis and other circulatory problems. On the evening of April 20, 1981, he was rushed to the Georgetown University Hospital by ambulance from Frederick, where he underwent emergency surgery at midnight. He had suffered what his doctors described as "profound systemic insult," a complete blockage of circulation on his left side below his chest. One of his doctors told him that it is not uncommon for people who suffer this to die. Although plaintiff survived, he was hospitalized from April 20th through May 7, 1981.



Because of his condition, it is unwise for plaintiff to travel any more than absolutely necessary. Although plaintiff used to attend all depositions, and even all status calls in his cases, he now no longer does so. His trips to Washington, D.C. are now generally limited to medical appointments with Dr. Hufnagel at Georgetown University Hospital. Such trips have proven to be both expensive--plaintiff cannot drive the distance to Washington any longer, and his wife does not drive--and exhausting.

Rule 45(d)(2) provides that a nonresident of the county where the deposition is to be held

may be required to attend only in the county wherein he is served with a subpoena, or within 40 miles from the place of service, or at such other convenient place as is fixed by an order of court.

Plaintiff has a right to assist his counsel in the prosecution of his case. It is particularly important that he be afforded this right where the issue concerns his right to be reimbursed for work which he performed for defendant as its consultant. Moreover, the deponent, Mrs. Lynne K. Zusman was the principal figure representing the government in consultancy matter, and plaintiff was present at several meetings with her and corresponded with her regarding the consultancy. Thus, his personal knowledge of the events surrounding the consultancy will enable him to be of direct assistance to his counsel during her interrogation.

Last year in Weisberg v. Department of Justice, et al., Civil Action No. 75-0226, Judge Pratt was confronted with a request by plaintiff that the deposition of FBI Special Agent John W. Kilty be taken at plaintiff's home. Over the objections of the Department of Justice and Agent Kilty, Judge Pratt ordered that Kilty's deposition be taken at plaintiff's home in Frederick, Maryland.

This Court should do likewise. Given plaintiff's physical condition, it is unwise, impractical, and totally "inconvenient" from him to come into the Washington area to assist in the taking of Mrs. Zusman's deposition. Accordingly, plaintiff strongly urges the Court to exercise its discretionary powers under Rule 45(d)(2) to fix his home at Frederick, Maryland, as the place for the taking of the Zusman deposition.

Respectfully submitted,



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O R D E R

Upon consideration of plaintiff's motion for an order fixing plaintiff's home at Frederick, Maryland as the place for the taking of the deposition of Mrs. Lynne K. Zusman, defendant's opposition thereto, and the entire record herein, it is by the Court this \_\_\_\_\_ day of \_\_\_\_\_, 1982, hereby

ORDERED, that plaintiff's motion be, and the same hereby is, GRANTED; and it is

further ORDERED, that the deposition of Mrs. Lynne K. Zusman be taken at plaintiff's home at 7627 Old Receiver Road, Frederick, Maryland.

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UNITED STATES DISTRICT JUDGE