

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

BRANDON FINCHUM, INDIVIDUAL
Plaintiff

V.

NACOGDOCHES COUNTY
Defendant.

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CIVIL ACTION No. 9:21-CV-285

**PLAINTIFF’S MOTION TO COMPEL DEPOSITION OF
JOHN FLEMING AND REQUEST FOR SANCTIONS**

NOW COMES Plaintiff Brandon Finchum, by and through undersigned counsel, and files this Motion to Compel Deposition of John Fleming and Request for Sanctions. In support thereof, Plaintiff would respectfully show to the Court that Defendant Nacogdoches County’s counsel refuse to produce John Fleming for deposition, much less propose suitable dates.

Plaintiff has requested the taking of John Fleming’s deposition no less that five times in writing and in at least two conferences. Taking John Fleming’s deposition was discussed at Brandon Finchum’s deposition on June 3rd, 2022. *See attached Exhibit A* – June 26th, 2022 Letter to Robert Davis and Robin O’Donoghue.

REQUEST FOR SANCTIONS

Defendant Nacogdoches County is engaging in vexatious litigation and refusing to produce John Fleming for deposition. In fact, Defendant’s counsel have stated that they will not produce John Fleming for deposition until and unless Paul Anderson agrees to give a deposition prior to that of John Fleming. This is an absurd and untenable position. Defendant’s June 27th, 2022 letter

says, “Once the issue of your deposition is resolved, we can look at the deposition of John Fleming.” *See attached Exhibit “B”* – June 27, 2022 Letter from Robin O’Donoghue.

Ms. O’Donoghue’s statement is unilaterally incredulous and prima facie evidence of sanctionable conduct.

Furthermore, Ms. O’Donoghue’s statement that “we have not conferred about the deposition of John Fleming” is patently false. Paul Anderson, Robert Davis and Robin O’Donoghue conferred for at least an hour about John Fleming deposition on June 2nd, 2022 and immediately after Plaintiff Brandon Finchum’s deposition on June 2nd, 2022.

Defendant’s position of requiring Paul Anderson’s deposition as a precondition before producing John Fleming for deposition is extortive, coercive and constitutes an unethical “shakedown by motion.”

Unlike the *Shelton* test criteria required to take the deposition of attorney Paul Anderson, which the Defendant has absolutely failed to comply with, no such excuse exists to avoid taking the deposition of Defendant representative John Fleming.

REQUEST FOR HEARING

Plaintiff Brandon Finchum requests a record hearing on his Motion to Compel the Deposition of John Fleming.

PRAYER

Movant seeks to compel the oral and video deposition of John Fleming and within 21 days of the Court’s order.

Movant is seeking to defray its costs of filing this Motion to Compel the Deposition of John Fleming in the amount of \$500.

Respectfully submitted,

PAUL V. ANDERSON



PAUL V. ANDERSON
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BRANDON FINCHUM

CERTIFICATE OF CONFERENCE

Counsel for the parties conferred for as much as one hour after the conclusion of Plaintiff Brandon Finchum's oral and video Deposition on Friday, June 3rd, 2022. No agreement could be reached then. Plaintiff's Counsel wrote a letter on June 26th, 2022 and Defendant's counsel wrote a letter to Plaintiff's counsel on June 27th, 2022. *See attached exhibits "A" and "B."* The parties have failed to resolve the issues.



PAUL ANDERSON, PLLC

ATTORNEY AT LAW

601 N. Street | Nacogdoches, TX 75961 | 936.305.5600

June 26th, 2022

Robert Davis
Robin O'Donoghue
Flowers Davis
1021 ESE Loop 323, Suite 200
Tyler Texas 75701
Via email to: rsd@flowersdavis.com
Via email: rho@flowersdavis.com

RE: *Finchum v Nacogdoches County*; **Civil Action 9:21-CV-285**; In the U.S. Eastern District, Lufkin Division.

Mr. Davis & Ms. O'Donoghue;

Over the past 60 days, we have requested to take John Fleming's oral and video deposition not less than five times in writing and also during our two recent phone conversations.

You continue to refuse to provide proposed dates for John Fleming's deposition.

By the end of business Monday, June 27th, 2022, provide proposed dates in July for John Fleming's deposition and or we will file a Motion to Compel and for Sanctions without further notice.

You have provided no legitimate legal basis for refusing to present John Fleming for oral and video deposition.

This letter and any response to it will be used as an exhibit in a Motion to Compel and for Sanctions.

Without reservations,
Paul Anderson



FLOWERS ♡ DAVIS, P.L.L.C.

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JOHN "JACK" R. FULGHAM

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June 27, 2022

Via Email: paul@paulandersonlaw.com

Paul Anderson
PAUL ANDERSON, PLLC
601 North Street
Nacogdoches, Texas 75961

Re: Civil Action No. 9:21-CV-285; *Brandon Finchum v. Nacogdoches County*; In the United States District Court for the Eastern District of Texas, Lufkin Division.

Dear Mr. Anderson:

In response to your email sent on Sunday, June 26, 2022, please be advised that we want to take your deposition, as set forth in our motion to compel, prior to any additional depositions. Once the issue of your deposition is resolved, we can look at the deposition of John Fleming.

The four conversations between you and Mr. Finchum are at the heart of this case, and you have information that is not available from any other source. We stated our intention to take your deposition at the beginning of this case, and we also requested your deposition well before your request to take John Fleming's deposition. We have thoroughly conferred about your deposition, but we have not conferred about the deposition of John Fleming.

I would point out that your reasoning behind resisting your own deposition can also be applied to Mr. Fleming's deposition. He is not a party, he is the attorney for Nacogdoches County, and much of his knowledge would be protected by attorney-client privilege.

Sincerely,



Robin Hill O'Donoghue

RHO:rl0

Finchum, B.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

BRANDON FINCHUM, INDIVIDUAL

Plaintiff

V.

NACOGDOCHES COUNTY

Defendant.

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CIVIL ACTION No. 9:21-CV-285

ORDER

This Matter, having come before the Court on the Plaintiff's Motion to Compel Deposition of John Fleming and Sanctions, and

It appears, upon the arguments of counsel and for good cause shown, that the Motion to Compel the Deposition of John Fleming should be GRANTED.

It is hereby ORDERED that John Fleming, or other qualified representative, shall present themselves for deposition within 21 days of this Order, and

It further appearing for good cause shown that Sanctions should be awarded in the amount of \$_____ to dissuade obstruction and encourage cooperation by Defendant's counsel.

It is hereby ORDERED that sanctions in the amount of \$_____ are awarded to the Plaintiff and to be paid within _____ days of this Order.