

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

**JIM SISNEY, an individual,** )  
 )  
 **Plaintiff,** )  
 )  
 **vs.** )  
 )  
 **INDEPENDENT SCHOOL DISTRICT** )  
 **NO. 3 OF TULSA COUNTY, a Political** )  
 **Subdivision; and the BROKEN ARROW** )  
 **SCHOOL BOARD,** )  
 )  
 **Defendants.** )

**Case Number: 09-CV-253-TCK-PJC**

**EMERGENCY MOTION TO STAY DEPOSITION/DISCOVERY OR  
MOTION FOR PROTECTIVE ORDER**

**COMES NOW** Plaintiff, Jim Sisney (“Plaintiff”), by and through his attorneys of record, Gary L. Richardson, Charles L. Richardson and David R. Keesling of Richardson Richardson Boudreaux, and pursuant to the Federal Rules of Civil Procedure Rule 26(c), respectfully requests the Court order the deposition of Plaintiff not be conducted, or, in the alternative, stay the deposition until such time as This Court rules on the pending Application for Order of Dismissal and the conflict of interest of Defense counsel, upon which this motion is based. A separate Motion to Disqualify Counsel will subsequently and immediately be filed. In support of this Motion, Plaintiff submits the following brief:

**CERTIFICATION OF COMPLIANCE**

Plaintiff hereby certifies that he has in good faith conferred with other affected parties and opposing counsel in an effort to resolve the dispute without court action. However, the parties were unable to agree on postponement or stay of the deposition of Plaintiff.

### **PERTINENT FACTS**

On or about December 19, 2009, This Court entered an Order compelling Plaintiff's attendance at a deposition scheduled December 22, 2009 at the offices of opposing counsel, Rosenstein, Fist & Ringold. Following the Court's Order, Counsel for Plaintiff discovered new and relevant information regarding the involvement of defense counsel with parties and potential witnesses in the lawsuit, to the extent that defense counsel is expected to be a witness, if not a party, to this litigation, as well as to pending State Court action CJ- 2008- 06173, styled *Dr. Jim Sisney v. Mike Rampey, Douglas J. Hudkins, Maryanne Flipppo, Shari Wilkins and Sharon Whelpley*.

### **ARGUMENTS & AUTHORITIES**

Rule 26(c) of the Federal Rules of Civil Procedure provides the Court with the authority to issue a protective order to protect Plaintiff from defense counsel's unreasonable and oppressive discovery demands. Rule 26(c) states that the Court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including forbidding the disclosure or discovery. Fed. R. Civ. P. 26(c)(1)(A). As stated herein, there is ample support and justification for the Court to stay or disallow defense counsel's discovery and examination of Plaintiff, as continuous discovery promotes undue burden and expense for Plaintiff based on Plaintiff's assertions in the pending Application for Order of Dismissal, and further, defense counsel has a clear conflict of interest in the lawsuit.

Considering the totality of circumstances in this case, Rosenstein, Fist & Ringold's continued representation of Defendant is the type of representation that would harm the integrity of the judicial process. Not only are Rosenstein, Fist & Ringold attorneys potential witnesses in this lawsuit, as well as the pending State Court action, they have the potential for personal liability as potential parties and are in possession of, and have been disseminating, confidential information for the

intended purposes of use against the Plaintiff. Defendant is well-aware of the aforementioned activities, including defense counsel's direct contact with parties and witnesses, distribution of relevant and confidential documents, and other inappropriate involvement concerning the causes of action giving rise to this lawsuit. Allowing defense counsel's continued discovery in this litigation causes unfair prejudice, wrongfully punishes, and otherwise prevents the administration of justice as it pertains to Plaintiff.

Finally, This Court has not ruled on Plaintiff's pending Application for Order of Dismissal Without Prejudice, and Defendant's right to discovery is not absolute. *Langford v. Anderson*, 1989 OK CIV APP 47, 778 P.2d 937.

### CONCLUSION

**WHEREFORE**, premises considered, Plaintiff Jim Sisney respectfully requests the Court enter an order forbidding defense counsel from conducting discovery, specifically Dr. Sisney's deposition, until such time as This Court rules on the Application for Order of Dismissal and conflict of interest issue asserted herein.

Respectfully submitted,

/s/Gary L. Richardson

Gary L. Richardson, OBA# 7547

Charles L. Richardson, OBA# 13388

David R. Keesling, OBA#17881

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*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 21st day of December, 2009, a true and correct copy of the foregoing instrument was properly transmitted to:

Kent B. Rainey  
**ROSENSTEIN, FIST & RINGOLD**  
525 South Main, Suite 700  
Tulsa, Oklahoma 74103  
*Attorneys for Defendants*

/s/ Gary L. Richardson  
**RICHARDSON RICHARDSON BOUDREAUX**