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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BYRON EUGENE JOHNSON,

Plaintiff,

No. CIV S-05-2123 KJM EFB P

vs.

DAVID L. RUNNELS, et al.,

Defendants.

ORDER TO SHOW CAUSE

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During trial of this matter on June 20 and 21, 2011, defendant introduced the transcript from a phone conversation between defense counsel, Phillip L. Arthur, and plaintiff’s witness, Van M. Washington; the conversation took place on April 13, 2011. The transcript reflects that when Washington asked if he had to testify and indicated that he did not want to testify, Arthur suggested to Washington ways of avoiding an anticipated subpoena. In particular, Arthur told Washington “it’s really up to you,” and related an account of a trial in which a witness was able to avoid testifying by letting the plaintiff know and writing a letter to his counselor. After Washington indicated he had already spoken with his counselor, Arthur said that if Washington received a subpoena, “it’s up to you and if you decide you don’t want to testify, I would . . . let your [] counselor and the [] litigation coordinator there know.” A copy of the entire transcript, marked as Defendant’s Exhibit C, is attached to this order.

1 California Rule of Professional Conduct 5-310(A) states in pertinent part that “[a]
2 member shall not (A) [a]dvice . . . a person to secrete himself or herself . . . for the purpose of
3 making that person unavailable as a witness”

4 The court hereby ORDERS defense counsel to show cause, within fourteen (14)
5 days of the entry of this order, why sanctions should not be imposed against him for his
6 disregard of this rule. See Local Rules 180(e) & 110; *Tuttle v. Combined Ins. Co.*, 222 F.R.D.
7 424, 428 (E.D. Cal. 2004) (citing *United States v. Wunsch*, 84 F.3d 1110, 1114 (9th Cir. 1996)).

8 IT IS SO ORDERED.

9 DATED: June 24, 2011.

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13 UNITED STATES DISTRICT JUDGE
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