

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ORAN DANIEL, ET AL

CIVIL ACTION

VERSUS

NUMBER 09-41-FJP-SCR

ELIZABETH CAESAR, ET AL

RULING ON MOTION TO QUASH

Before the court is the defendants' Motion to Quash the notice of deposition of plaintiff Oran Daniel. Record document number 10. The motion is opposed.¹

On March 11, 2009, the plaintiffs served a notice to take the deposition of plaintiff Oran Daniel on March 25, 2009. Rule 26(d)(1), Fed.R.Civ.P., provides that no party may seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempt from initial disclosures, or when authorized by the Federal Rules of Civil Procedure, by stipulation or by a court order.

This is not a proceeding exempt from initial disclosures, no court order has authorized taking Daniel's deposition, and the plaintiffs have not directed the court's attention to any other provision of the Federal Rules of Civil Procedure which authorize taking his deposition at this time.

Defendant contends that a Rule 26(f) conference has not been

¹ Record document number 14.

held by the parties,² but the plaintiffs contend that counsel have conferred on numerous occasions on the topics required by Rule 26(f). Rule 26(f)(2) provides, in relevant part, as follows:

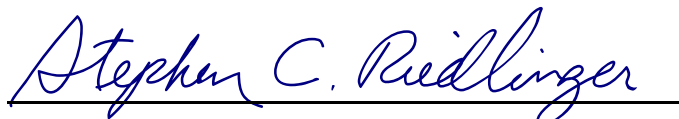
The attorneys of record ... that have appeared in the case are jointly responsible for arranging the conference, attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days after the conference a written report outlining the plan.

No written report outlining the parties discovery plan has been submitted to the court. This fact undermines the plaintiffs' argument that a bona fide Rule 26(f) conference has been held, i.e. that they have "conferred as required by Rule 26(f)."

Plaintiffs are now without options. They could have filed, and still can file, a motion pursuant to Rule 30(a)(2)(A)(iii), Fed.R.Civ.P., supported by medical records or an affidavit from a doctor establishing the need to depose Daniel promptly for health reasons.

Accordingly, the defendants' Motion to Quash the notice of deposition of plaintiff Oran Daniel is granted.

Baton Rouge, Louisiana, March 24, 2009.



STEPHEN C. RIEDLINGER
UNITED STATES MAGISTRATE JUDGE

² This is not the same as the initial scheduling conference set for May 14, 2009. Record document number 4. The Rule 26(f) conference is supposed to be held before the scheduling conference. See Rule 26(f)(1).