

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

STELLA M. OJEDA, )  
)  
Plaintiff, )  
)  
v. )  
)  
CITY OF SCOTTSBLUFF, a )  
political subdivision of the State of )  
Nebraska, )  
)  
Defendant. )

4:08CV3067

MEMORANDUM AND ORDER

The plaintiff has served notices to subpoena seven non-party witnesses for depositions in Scottsbluff, Nebraska on September 8 through September 11, 2009. Plaintiff’s counsel is from New York; defense counsel is from Lincoln, Nebraska. Therefore, in addition to attorney and court reporter fees for these depositions, travel costs will be incurred if the depositions go forward.

The defendant has objected to the notices of subpoena on several procedural grounds, (filing no. [82](#)), all of which the plaintiff claims either lack merit or have been corrected. (Filing No. [95](#)). As of the time of plaintiff’s response, the subpoenas had not been served on the non-party witnesses. (Filing No. [95](#), ¶ 6).

Relying on the court’s prior memorandum and order, (filing no. [60](#)), the defendant has moved for Rule 11 sanctions, claiming the plaintiff is pursuing this litigation “for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the costs of litigation,” her claims and legal contentions are not warranted by existing law, and her factual contentions lack evidentiary support. Filing No. [63](#). The plaintiff has responded, (filing no. [77](#)), and the defendant has

moved to strike evidence offered with plaintiff's response. (Filing No. [80](#)). The Rule 11 motion will not be fully submitted for court review until September 4, 2009.

The court's ruling on the Rule 11 motion may eliminate any need to depose the seven non-party witnesses, and if the court denies the Rule 11 motion, sufficient time will remain to depose these witnesses before the December 1, 2009 discovery deadline. Accordingly,

**IT IS ORDERED:**

- 1) The depositions of Sgt. Troy Brown, Shawn West, P.O. Cory Enlow, P.O. Lance Kite, Sgt. Phil Eckerberg, Sgt. Shawn Mcfarland, and Sgt. Phil Martindale are stayed pending the court's ruling on the defendant's motion for Rule 11 sanctions, (filing no. [63](#)), and defendant's objection to plaintiff's notice of subpoenas to non-party witnesses, (filing no. [82](#)).
- 2) To the extent it can be avoided at this time, the plaintiff shall not serve the subpoenas on the non-party witnesses, and as to any subpoenas that may be served, plaintiff's counsel shall promptly advise the witness served that the deposition has been stayed.

DATED this 20<sup>th</sup> day of August, 2009.

**BY THE COURT:**

*Richard G. Kopf*  
United States District Judge