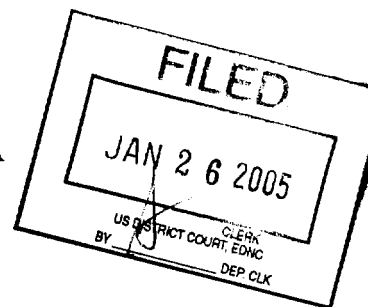


**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION**  
Civil Action No. 5:05-CV-48-FL(1)



RICHARD P. NORDAN, as Ancillary )  
Administrator for the separate Estates of )  
STEPHEN S. HELVENSTON, MIKE R. )  
TEAGUE, JERKO GERALD ZOVKO and )  
WESLEY J. K. BATALONA, )

Plaintiff, )

v. )

BLACKWATER SECURITY )  
CONSULTING, LLC, a Delaware Limited )  
Liability Company; BLACKWATER )  
LODGE AND TRAINING CENTER, INC., )  
a Delaware Corporation, JUSTIN L. )  
McQUOWN, an individual; and THOMAS )  
POWELL, an individual, )

Defendants. )

**MOTION TO DISSOLVE *EX PARTE*  
STATE COURT ORDERS PERMITTING  
NOTICE OF DEPOSITION**

Pursuant to 28 U.S.C. § 1450, Defendants Blackwater Security Consulting, LLC, and Blackwater Lodge and Training Center, Inc. ("Blackwater") hereby submit this Motion To Dissolve *Ex Parte* State Court Orders Permitting Plaintiff to Notice a Deposition prior to January 28, 2005.

This case was originally commenced in Wake County Superior Court on January 5, 2005. Prior to service on any Defendant, Plaintiff obtained an *ex parte* order from Judge Donald W. Stephens of Wake County on January 11, 2005, permitting the service of a Notice of Deposition on John Potter prior to January 28, 2005. (Attached hereto as Exhibit A). The Order did not address the deposition itself, it merely permitted a Notice to issue. Plaintiff filed a Notice to take the deposition of Mr. Potter on January 28, 2005, in Anchorage, Alaska. (Attached hereto as

Exhibit B). On January 21, 2005, Plaintiff obtained another *ex parte* order from Judge Evelyn W. Hill of Wake County commissioning the state court of Alaska to administer this deposition. (Attached hereto as Exhibit C).

While Blackwater Lodge and Training Center, Inc. was served on January 11, 2005, Defendant McQuown was not served until January 18, and Mr. Powell has not yet been served. Pursuant to 28 U.S.C. § 1450, Blackwater requests that this Court dissolve the *Ex Parte* Orders permitting a Notice of Deposition of Mr. Potter to be issued prior to January 28, 2005 in Alaska.

In further support of its Motion, Blackwater submits a Memorandum of Law in Support of the Motion to Dissolve *Ex Parte* State Court Orders Permitting Notice of Deposition.

This the 26<sup>th</sup> day of January, 2005.

WILEY REIN & FIELDING LLP

By: 

Fred. F. Fielding  
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SMITH, ANDERSON, BLOUNT, DORSETT,  
MITCHELL & JERNIGAN, LLP

By: 

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N.C. State Bar No. 13967  
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Raleigh, North Carolina 27602  
TEL: 919.821.1220  
FAX: 919-821-6800

*Attorneys for Blackwater Security  
Consulting, LLC and Blackwater Lodge  
and Training Center, Inc.*


**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this date served the Motion To Dissolve *Ex Parte* State Court Orders Permitting Plaintiff to Notice a Deposition upon all other parties to this cause by U.S. Mail, addressed to the following parties:

David F. Kirby  
William B. Bystrynski  
Kirby & Holt, LLP  
Post Office Box 31665  
Raleigh, North Carolina 27622

Daniel J. Callahan  
Brian J. McCormack  
Marc P. Miles  
Callahan & Blaine, APLC  
3 Hutton Centre Drive, Suite 900  
Santa Ana, California 92707  
*Attorneys for Plaintiff*

This the 26<sup>th</sup> day of January, 2005.

  
Kirk G. Warner

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

WAKE COUNTY

05 CVS 000173

RICHARD P. NORDAN, as Ancillary )  
Administrator for the separate Estates of )  
STEPHEN S. HELVENSTON, MIKE R. )  
TEAGUE, JERKO GERALD ZOVKO and )  
WESLEY J.K. BATALONA, )

Plaintiffs, )

v. )

**ORDER SHORTENING TIME FOR  
NOTICE OF DEPOSITION**

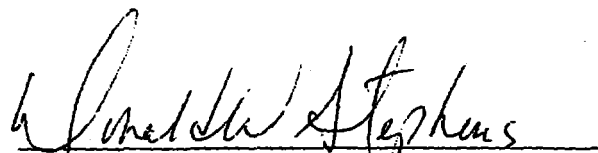
BLACKWATER SECURITY )  
CONSULTING, LLC, a Delaware Limited )  
Liability Company; BLACKWATER )  
LODGE AND TRAINING CENTER, INC., )  
a Delaware Corporation, JUSTIN L. )  
MCQUOWN, an individual; and THOMAS )  
POWELL, an individual, )

Defendants. )

THIS MATTER coming on for hearing on plaintiffs' ex parte motion to shorten the notice needed for deposition, and the Court, having reviewed the motion and the affidavit submitted by the plaintiffs:

THE COURT hereby allows the plaintiffs' motion to shorten the time for notice of the deposition of John Potter. Plaintiff is to serve notice of deposition on or before January 28, 2005.

This the 11 day of January, 2005.

  
Superior Court Judge Presiding

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
05 CVS 000173

WAKE COUNTY

RICHARD P. NORDAN, as Ancillary )  
Administrator for the separate Estates of )  
STEPHEN S. HELVENSTON, MIKE R. )  
TEAGUE, JERKO GERALD ZOVKO and )  
WESLEY J.K. BATALONA, )

Plaintiffs, )

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BLACKWATER SECURITY )  
CONSULTING, LLC, a Delaware Limited )  
Liability Company; BLACKWATER )  
LODGE AND TRAINING CENTER, INC., )  
a Delaware Corporation, JUSTIN L. )  
MCQUOWN, an individual; and THOMAS )  
POWELL, an individual, )

Defendants. )

**DEPOSITION NOTICE**


YOU ARE HEREBY NOTIFIED THAT on January 28, 2005, beginning at 10:00 a.m., at Northern Lights Real Time & Reporting, 3819 Hampton Drive, Anchorage, Alaska, 99504 [(907) 337-2221,] I will take the video taped deposition of John Potter, upon oral examination, pursuant to Rules 26 and 30 of the North Carolina Rules of Civil Procedure. The deposition will be taken before a Notary Public or some other officer duly authorized by law to take depositions.

Pursuant to Rule 30(b)(2) of the North Carolina Rules of Civil Procedure, this deposition must be conducted prior to the expiration of the 30-day period after service of the summons and complaint in this matter, as the deponent is about to leave the United States. The undersigned,


Daniel J. Callahan, contacted the deponent on or about January 5, 2005, for the purpose of confirming his location of residence to eventually conduct his deposition. During that conversation, the deponent refused to speak to the undersigned and insisted that he will not be around to be deposed anyway, in that he is leaving the country for Iraq within the next three (3) weeks or so, and does not know when he will be returning to the United States.

Dated: January 10, 2005

CALLAHAN & BLAINE, APLC

By:   
DANIEL J. CALLAHAN  
BRIAN J. McCORMACK  
MARC P. MILES  
3 Hutton Centre Drive, Suite 900  
Santa Ana, California 92707  
(714) 241-4444  
Attorneys for Plaintiff  
RICHARD P. NORDAN, as the Ancillary  
Administrator of the separate Estates of STEPHEN  
S. HELVENSTON, MIKE R. TEAGUE, JERKO  
GERALD ZOVKO and WESLEY J.K.  
BATALONA

Dated: January 10, 2005

KIRBY & HOLT, LLP  
By:   
DAVID F. KIRBY  
WILLIAM B. BYSTRYNSKI  
3201 Glenwood Avenue, Suite 100  
Raleigh, North Carolina 27612  
(919) 881-2111  
Attorneys for Plaintiff  
RICHARD P. NORDAN, as the Ancillary  
Administrator of the separate Estates of STEPHEN  
S. HELVENSTON, MIKE R. TEAGUE, JERKO  
GERALD ZOVKO and WESLEY J.K.  
BATALONA

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

WAKE COUNTY

05 CVS 000173

RICHARD P. NORDAN, as Ancillary )  
Administrator for the separate Estates of )  
STEPHEN S. HELVENSTON, MIKE R. )  
TEAGUE, JERKO GERALD ZOVKO and )  
WESLEY J.K. BATALONA, )

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LODGE AND TRAINING CENTER, INC., )  
a Delaware Corporation, JUSTIN L. )  
MCQUOWN, an individual; and THOMAS )  
POWELL, an individual, )

Defendants. )

**ORDER FOR COMMISSION  
TO TAKE DEPOSITION**

FILED  
2005 JAN 21 AM 10:43  
WAKE COUNTY, C.S.C.  
BY \_\_\_\_\_

FROM THE PEOPLE OF THE STATE OF NORTH CAROLINA, TO COMMISSIONER  
OR COURT REPORTER ASSOCIATED WITH NORTHERN LIGHTS REAL TIME &  
REPORTING:

WHEREAS, it appears to the Superior Court of the State of North Carolina, County  
of Wake, from the application of Stephen S. Helvenston, Mike R. Teague, Jerko Gerald  
Zovko and Wesley J. K. Batalona, that John Potter of Anchorage, Alaska, is a material  
witness in the action currently pending in this Court, and that the testimony of the witness  
can now be taken by Deposition; this Court appoints you a commissioner to examine the  
witness.



This Court requests that process issue in Anchorage, Alaska, requiring attendance and enforcing the obligations of the witness to produce documents and answer questions.

You are authorized and empowered on January 28, 2005, at 10:00 a.m. local time, at 3819 Hampton Drive, Anchorage, Alaska, 99504, to administer under oath to the witness and to cause the testimony of the witness on oral examination to be videographically recorded and reduced to writing and subscribed by the witness, and to certify the deposition to the above-entitled court and forward it in a sealed envelope, endorsed with the title of this action and marked "Deposition of John Potter, to David F. Kirby, attorney for Plaintiff Richard P. Nordan, Ancillary Administrator of the Estates of Stephen S. Helvenston, Mike R. Teague, Jerko Gerald Zovko and Wesley J. K. Batalona at Kirby & Holt, L.L.P., P. O. Box 31665, Raleigh, North Carolina, 27622."

This the 21 day of January, 2005.

Ernest W. Nell  
Superior Court Judge Presiding