

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

ROY L. DENTON)	
)	
Plaintiff)	Case No. 1:07-cv-211
)	
v.)	JURY DEMAND
)	
STEVE RIEVLEY)	Collier/Carter
)	
Defendant)	

**DEFENDANT STEVE RIEVLEY’S MOTION FOR RELIEF
FROM THIS COURT’S JUNE 14, 2010 ORDER**
Federal Rules of Civil Procedure 60(b)(6)

Comes the Defendant, Steve Rievley, in his individual capacity, (herein “Officer Rievley”) pursuant to Rule 60(b)(6) of the *Federal Rules of Civil Procedure* and moves this Court to grant him relief, in part, from this Court’s June 11, 2010 Order requiring the defendant to produce the defendant’s cellular telephone records by June 25, 2010. (See Doc. 99). For cause, Officer Rievley would show the Court as follows:

On May 20, 2010, the Plaintiff personally served Officer Rievley’s attorney with a subpoena requiring him to produce the cellular telephone numbers of both Officer Rievley’s personal cellular telephone and his city-issued cellular telephone. Having previously objected to providing such information in written discovery, Officer Rievley again objected to providing this information via a subpoena. In an attempt to compromise, however, Elizabeth Dickson Roderick, Officer Rievley’s attorney, contacted the Plaintiff and offered to provide information regarding Officer Rievley’s

cellular telephone usage between the hours of 12:00am and 3:00am on September 9, 2006. Subsequently, Officer Rievley's attorney filed a Motion to Quash to the Subpoena, or in the Alternative for a Protective Order to which the Plaintiff filed his Response to the same. (Doc. 95 and 97). A hearing was held on the same on June 11, 2010 before this Honorable Court. At the conclusion of said hearing, the Defendant was ordered to "plac[e] a copy of these records in the United States mail on or before **Friday, June 25, 2010.**" (Doc. 99) (emphasis in original). This Court entered the Order relative to the June 11, 2010 hearing on June 14, 2010. (Doc. 99).

In effort to comply with the Order, Attorney Roderick contacted Sprint Nextel Corporate Security Department ("Sprint"), the provider for Officer Rievley's personal telephone, on June 15, 2010 to determine the procedure for serving a subpoena upon the company in the most efficient way given the compressed timeline. (*See Affidavit of Attorney Roderick, attached hereto as Exhibit 1, ¶ 3*). Attorney Roderick spoke with Ms. Callie Keep of Sprint. *See Exhibit 1, ¶ 4*. She was informed she could file the subpoena by facsimile, along with the Court's Order, but could expect that the information requested might not be provided for three (3) to four (4) weeks given the high volume of subpoenas Sprint receives each month. *Id.* Attorney Roderick served the Subpoena upon Sprint by facsimile on June 15, 2010, receiving confirmation of the service by Sprint that same day. Attorney Roderick filed Notice of Subpoena Returned Executed as to Sprint Nextel on June 17, 2010. (Doc. 101). Once Attorney Roderick received the requested records from Sprint, she sent the same, unredacted, to the Plaintiff on June 24, 2010 in compliance with this Court's Order. *See Exhibit 1, ¶ 5*.

On June 17, 2010, Attorney Roderick contacted Verizon Wireless's Litigation Department ("Verizon"), the provider for Officer Rievley's city-issued cellular telephone, to determine the

procedure for serving a subpoena upon the company in the most efficient way given the compressed timeline. See Exhibit 1, ¶ 6. (With regard to Officer Rievley's city-issued cellular telephone with Verizon, Officer Rievley is not the owner or customer of Verizon of said cellular telephone). See Exhibit 1, ¶ 7. Like Sprint, Verizon confirmed that Attorney Roderick could serve the subpoena via facsimile but that she could not expect to receive the requested records for up to six (6) to eight (8) weeks even with the Court's Order due to the voluminous amount of subpoenas Verizon receives each month. See Exhibit 1, ¶ 8. Attorney Roderick proceeded to serve the subpoena upon Verizon, along with Court's Order, and to file a Notice of Subpoena Returned Executed as to Verizon Wireless on June 17, 2010. (Doc. 102). To date, Attorney Roderick has not received the requested records from Verizon Wireless and does not expect to receive it on or before June 25, 2010. See Exhibit 1, ¶ 11. On June 24, 2010, Attorney Roderick notified the Plaintiff that she had not received the information requested from Verizon Wireless for the reasons set forth herein. See Exhibit 1, ¶ 12.

Thus, Officer Rievley has made all reasonable attempts, through his attorney, to comply with this Court's Order to provide the Plaintiff with the requested documents. He has provided the Plaintiff with the information requested from his personal cellular telephone **before** June 25, 2010. Due to circumstances beyond on his control, however, he is unable to provide to the Plaintiff with the information requested regarding the Plaintiff's city-issued cellular telephone. See Exhibit 1, ¶¶ 7-11. Accordingly, Officer Rievley would request that this Court grant him relief from this Court's June 14, 2010 Order, in part, pursuant to *Federal Rule of Civil Procedure* Rule 60(b)(6) by granting him additional time to comply with the Order as justice so requires.

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Attorney for Defendant, Steve Rievley

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of June, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

This the 25th day of June, 2010.

Robinson, Smith & Wells

By: s/ Elizabeth Dickson Roderick

c: Roy L. Denton
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