

to be placed on her video deposition.⁴ In her letter, Ms. Boxley declared that

[t]he video deposition being placed on Youtube & other social media sites, by Mrs. Johnson makes my family and me an easy target for retaliation. I fear for my life every day and pray that it will be removed soon For my family's safety, I'm pleading that someone please place a permanent protection order on the video deposition used in case #EP120C418 FM. I've been pleading for months. If not for me, for my children please!⁵

The court issued its Order granting Ms. Boxley's request for a protective order pursuant to Federal Rule of Civil Procedure 26(c)(1)(A), which states: "The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including . . . forbidding the disclosure of discovery."⁶ Importantly, neither Plaintiff Johnson nor Mr. Clevenger issued any filings or correspondence with the court regarding this Order until November 12, 2013.

In his correspondence with the court, Mr. Clevenger advances several arguments. First, Mr. Clevenger argues he is entitled an absolute First Amendment right to post the article at issue. Second, Mr. Clevenger contends that he and his client, Plaintiff Johnson, never had an opportunity to be heard before the court issued its Order granting Ms. Boxley's request to place her video deposition under a permanent protective order.⁷ Third, Mr. Clevenger maintains that "Ms. Johnson vehemently rejects Ms. Boxley's allegation that she used the video to 'harass and bully' Ms. Boxley online," and merely chose to "comply with the [O]rder rather than 'rock the boat.'"⁸ Fourth, Mr. Clevenger further contests the Order constitutes an ex parte communication with Ms. Boxley, which "seems to have emboldened Ms. Boxley

⁴ Ex. 2, at 1.

⁵ *Id.*

⁶ Fed. R. Civ. P. 26(c)(1)(A); *see* Order, at 1.

⁷ *See* Ex. 1, at 1.

⁸ *Id.*

to misbehave even more.”⁹ To substantiate his final claim, Mr. Clevenger argues that the video deposition at issue in the court’s prior Order was played in open court for the jury on February 6, 2012.¹⁰ Mr. Clevenger also states that the video had been displayed publicly on Youtube for more than one year prior to the court’s Order.¹¹ In support of his claims, Mr. Clevenger relies on Canon 3(A)(4) of the Code of Conduct for United States Judges (“Code of Conduct”).¹²

II. DISCUSSION

The court issued its Order granting a protective order as to Ms. Boxley’s video deposition precisely *because of* Canon 3(A)(4)(b) of the Code of Conduct which Mr. Clevenger cites. Canon 3(A)(4)(b) of the Code of Conduct allows a judge to

when circumstances require it, permit *ex parte* communication for scheduling, administrative, or *emergency purposes*, but only if the *ex parte* communication does not address substantive matters and the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the *ex parte* communication.¹³

This court found Ms. Boxley’s April 19, 2013 letter to be an *ex parte* communication justifying action for emergency purposes. Notably, in its Order the court explained the compelling and immediate need for restricting disclosure of Ms. Boxley’s deposition and other information pertaining to Ms. Boxley, based on her representations that wide dissemination of the video may affect her employment prospects or subject her to retaliation.¹⁴ Moreover, it is irrelevant that Ms. Boxley’s deposition was available online for any period of time prior to the court’s Order, as the court found that Ms. Boxley was

⁹ *Id.*

¹⁰ *Id.* at 2.

¹¹ *Id.*

¹² *Id.* at 2-3.

¹³ Code of Conduct for United States Judges Canon 3(A)(4)(b) (emphasis added).

¹⁴ *See* Order, at 1.

unable to resolve the dispute with Plaintiff Johnson, despite multiple communications with Mr. Clevenger.¹⁵

Notwithstanding that Ms. Boxley's deposition was aired in open court, Canon 3(A)(4)(b), in conjunction with Federal Rule of Civil Procedure 26(c)(1)(A), require the court to balance the interests of a party's First Amendment right to speak freely and to be given the opportunity to be heard in court, with another's right to the protection of one's safety. Additionally, neither Mr. Clevenger, nor his client, Plaintiff Johnson, have filed or submitted any correspondence in response to the court's Order until now – more than six months after the Order was issued.¹⁶

As the court finds its Order [ECF No. 146] to be proper, it **DENIES** Attorney Ty Clevenger's request on behalf of his client, Sandi Johnson.

SO ORDERED.

SIGNED this 18th day of **November, 2013.**



FRANK MONTALVO
UNITED STATES DISTRICT JUDGE

¹⁵ *See id.*

¹⁶ Ty Clevenger received electronic notification via email within 24 hours of the Clerk of the Court's filing of the court's Order.