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County Lawyer Faces \$500-a-Day Penalty for Discovery Failure

Andrew Keshner

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Angered by what he described as "stonewalling" of discovery demands by Nassau County in a pending civil rights action, a federal magistrate judge last week ordered an assistant county attorney to pay \$500 a day in sanctions until the county complies.

"This action has been pending for twenty-nine months and the County Defendants have failed to turn over a single document in discovery, despite plaintiff's persistent demands," Eastern District Magistrate Judge E. Thomas Boyle ([See Profile](#)), sitting in Central Islip, wrote on March 26 in [Smith v. County of Nassau](#), 10-cv-4874.

Boyle said that attorney Andrew R. Scott, "in fact appeared at oral argument today and acknowledged his failures, stating that commitments in other cases was the cause for his misconduct. Yet he still has not produced a single document."

Boyle imposed the \$500-a-day sanction against Scott for failure to comply with an Oct. 18, 2012, order requiring the county to "respond/comply with the plaintiff's outstanding document requests" by Nov. 16.

Boyle said the sanctions would apply as long as the county continued to shirk its obligation to comply with the court order, that the county would have to pay the plaintiff's costs in connection with the motion for sanctions, and that if the office continued to "stonewall" there could be additional sanctions and the office could be found in contempt.

The magistrate judge called the county's conduct "truly remarkable" and "out of character" for the county attorney's office.

Nassau County Attorney John Ciampoli said yesterday that his office was in "full compliance" with its discovery obligations by April 1 and will now seek to vacate Boyle's order.

The underlying case arose in October 2009, when Michael Smith said he and his then-pregnant wife were wrongfully evicted from their Roosevelt residence. Police removed their possessions, and Smith was arrested for criminal trespass. After the case was dismissed, Smith sued for malicious prosecution, false arrest and abuse of process.

Smith is represented by Frederick Brewington and Gregory Calliste Jr. of the Law Offices of Frederick K. Brewington in Hempstead.

Discovery was supposed to have been completed by April 11, 2012. But Smith was involved in an automobile accident, which caused a three-month delay.

The case was initially assigned to Eastern District Judge Joseph Bianco ([See Profile](#)) and he ordered a revised discovery schedule in March 2012. The case was then re-assigned to Judge Margo Brodie.

At an April 2012 conference, Boyle ordered discovery to be completed in October. In another conference before the October

deadline, Boyle ordered the county to respond to document requests by Nov. 16, 2012.

In February 2013, Smith's attorneys moved for sanctions against the county, saying repeated requests to Scott for discovery proved unsuccessful.

Scott argued that sanctions should be denied. He acknowledged a failure to meet the November deadline but wrote in court papers that "such failure is due to oversight and miscommunication rather than willful neglect of the Court's order." Scott added that he was tied up with another trial as the deadline approached and had handed the matter to others in his office. But Scott also claimed Smith's attorneys made late deposition demands.

"Plaintiff's attorneys' efforts to shift the blame for their own neglect under the guise of a motion for sanctions should not be countenanced," Scott wrote.

In his ruling, Boyle said he "reject[ed] any claim by the County Defendants' counsel that the non-compliance here is justified."

The only issue, Boyle said, was the "appropriate remedy."

His remedy included barring individual county defendants from offering evidence for or against any motion or precluding their testimony at trial unless they were deposed before May 15.

In an interview, Ciampoli said the county had already been in "partial compliance" at the time the ruling was handed down.

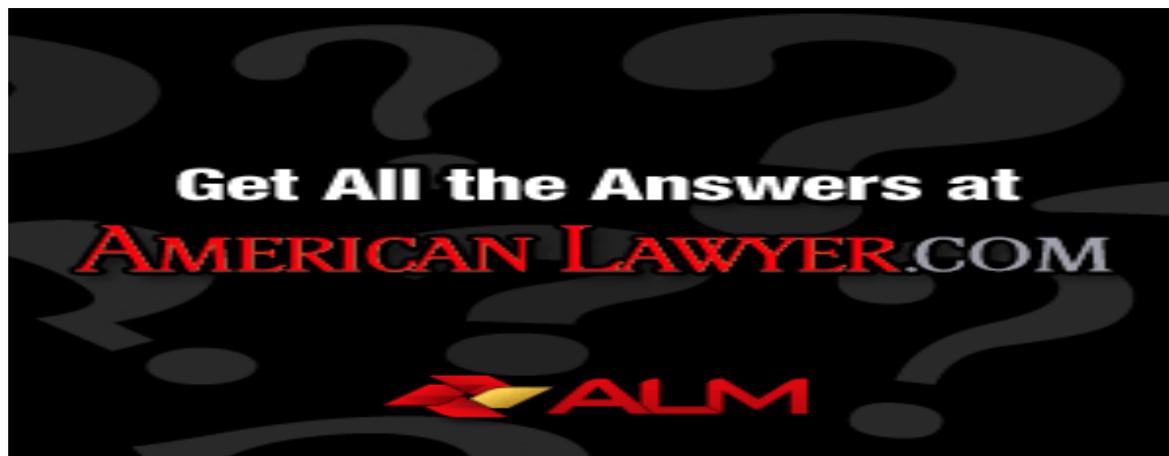
He claimed Brewington engaged in a "material misrepresentation of the facts" when asserting there had been no discovery compliance.

"This is an adversarial system. I'm well aware of it. Fred Brewington is well aware of it," said Ciampoli. But he noted his office now has almost 50 fewer deputy county attorneys than it did when he became county attorney in January 2010.

"This is an office that is understaffed and overworked. I have no sympathy for Fred Brewington to take advantage of that because of the tough times we're in, in marshalling our resources," Ciampoli said.

Brewington and Calliste did not respond to a request for comment.

@Andrew Keshner can be contacted at akeshner@alm.com.



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