

MASSACHUSETTS Lawyers Weekly



Boston MP in hot water for allegedly 'feeding' answers in Zoom depo

By: Pat Murphy September 22, 2021

A federal judge has ordered the managing partner of O'Hagan Meyer's Boston office to explain why disciplinary action should not be taken against him for allegedly "feeding" answers to his client during a remote deposition.

The Sept. 9 show cause order issued by U.S. District Court Judge Leo T. Sorokin gives Jeffrey M. Rosin 28 days to respond to a referral for attorney discipline by Judge Indira Talwani in Barksdale School Portraits LLC v. Williams.

Talwani had granted in part the plaintiffs' motions for sanctions, which included disqualification of Rosin as counsel for defendant Elizabeth Williams. Talwani found that there could be "little question" that Rosin had engaged in misconduct during the April 28, 2021, Zoom deposition of Williams.

"By exploiting the remote nature of the deposition to improperly assist Ms. Williams, Mr. Rosin plainly frustrated Plaintiffs' rights to a fair examination of Ms. Williams," Talwani wrote.

Talwani further found that Rosin's actions were not a "momentary" lapse of judgment but were repeated numerous times over the course of the day.



"In coaching Ms. Williams during her deposition, Mr. Rosin undermined the truth-seeking purpose of discovery," Talwani wrote. "Furthermore, Mr. Rosin's conduct has the effect of sowing seeds of doubt in the minds of litigators and judges as to the effectiveness of remote deposition proceedings, which have become an important tool of the court during the public health crisis."

The plaintiffs alleged Williams wrongfully used her management position at their photography business to start a competing company. Williams brought counterclaims against Barksdale School Portraits for wrongful employment practices.

The plaintiffs filed a motion for sanctions after the deposition of Williams. Pennsylvania attorney Michael D. Homans, who represents the plaintiffs, declined to comment.

But in his May 13 motion for sanctions, Homans alleged that, during the Williams deposition, both Rosin and his client appeared on Zoom together from the same conference room. Both were muted and refused to take them off over Homans' objection, claim

According to Homans' brief, during the fifth hour of the deposition, he overheard Rosin provide Williams with an answer to a question and Williams repeat that same answer. Homans objected, but the deposition continued.

In his brief in support of sanctions, Homans claimed that a later review of the videotaped deposition revealed more than 50 instances in which Rosin provided Williams with either the answer to a question or information helpful to her response.

For example, the plaintiffs alleged Rosin surreptitiously told Williams to answer, "I don't know," in responding a question regarding what information she and her husband had downloaded from company computers after her termination from Barksdale.

Rosin is represented by Susan E. Cohen in the attorney disciplinary proceeding before Sorokin. Cohen, of Boston's Peabody & Arnold, declined to comment on the matter. Rosin didn't respond to a request for comment.

But in opposing the plaintiffs' motion for sanctions, Rosin emphasized that his client had answered "hundreds of difficult questions" posed by plaintiffs' counsel in a "truthful" manner.

Further, Rosin accused the plaintiffs of "unclean hands" in the matter.

"The emotions of the parties case have been escalated by the improper and inflammatory behavior of Attorney Homans, taunting Elizabeth at her deposition, which is grounds for denial of the Motion in and of itself, because it was unprofessional and untoward conduct to a highly fragile plaintiff," Rosin wrote.

Talwani held a hearing on the plaintiffs' motion for sanctions on June 3, at which time she indicated from the bench that Rosin would have to withdraw from the case — which he did a week later.

Talwani entered her written order on sanctions on Aug. 31. Talwani declined the plaintiffs' request that all of defendant Williams' claims and defenses be dismissed.

Instead, Talwani ordered that the plaintiffs be permitted to play the recorded exchanges of "Rosin's witness-leading comments" at trial.

In explaining why Rosin's withdrawal from the case was necessary, Talwani said that "disqualification is necessary and appropriate here as permitting Mr. Rosin's continued representation in this proceeding would suggest a modicum of tolerance for Mr. Rosin's conduct where there is none."

Finally, Talwani referred to Sorokin the question of whether discipline was warranted against Rosin, finding "the allegations of attorney misconduct both 'reasonably plausible and potentially serious.'"

As of press time, Rosin had not responded to Sorokin's show cause order other than to request a clarification that the disciplinary matter had not already been referred to the Board of Bar Overseers.

Alan E. Brown represents attorneys as part of his professional liability practice at Morrison Mahoney in Boston. Brown, who is not involved in the case, says the allegations against Rosin are "serious" and should not be dismissed as some sort of "gamesmanship" that gets a wink and a nod.

"There may be some level of 'gamesmanship' in conducting discovery," Brown says. "But directly feeding answers to a witness was never permissible when it comes to taking depositions. It seems in this deposition that it was possible up until a point only because of the technology that was in use here."

Brown says the lesson other lawyers need to take from the case is that they shouldn't expect the BBO or other authorities to take allegations of misconduct any less seriously simply because of the COVID pandemic.

"It seems like the lawyer in this case thought that because it was a Zoom deposition, some type of witness coaching may be appropriate," Brown says. "That's simply not the case."

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