

VIRGIE ARTHUR,

Plaintiff,

v.

HOWARD K. STERN, BONNIE  
STERN, LYNDAL HARRINGTON, ART  
HARRIS, NELDA TURNER, TERESA  
STEPHENS, LARRY BIRKHEAD,  
HARVEY LEVIN, TMZ  
PRODUCTIONS, INC., and  
CBS STUDIOS, INC.

Defendants.

§ IN THE DISTRICT COURT OF  
§  
§ HARRIS COUNTY, TEXAS  
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§ 80th JUDICIAL DISTRICT  
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§

**DEFENDANT HOWARD K. STERN'S MOTION TO QUASH THE  
NOTICE OF DEPOSITION OF DEFENDANT HOWARD K. STERN AND  
MOTION FOR PROTECTIVE ORDER**

COMES NOW Defendant Howard K. Stern ("Stern") and, subject to and without waiver of his Special Appearance and pursuant to Texas Rule of Civil Procedure 199.4, hereby moves to quash the Notice of Deposition of Howard K. Stern, which was served by Plaintiff Virgie Arthur at 4:50 p.m. (EST) on Friday, May 7, 2010. (A true and correct copy of Arthur's Notice of Intention to the Oral Deposition of Howard K. Stern is attached hereto as Exhibit A.) Stern simultaneously moves for a protective order regarding the same. In support of this Motion, Stern shows the Court as follows:

1. Stern has had a special appearance objecting to jurisdiction pending since August 4, 2008. Despite his special appearance, Stern has been forced to spend significant financial resources litigating this frivolous case – which as CBS's and TMZ's summary judgment motions have revealed in detail is nothing more than a fraud upon the judicial system intended to punish Stern for suing John O'Quinn and to shakedown a few deep pockets – as if this Court had

already determined that it has personal jurisdiction over him. Spending nearly two years stuck litigating and expending significant sums of money in defense of this fraudulent case makes a mockery of the special appearance process, which is intended to protect nonresident defendants who are not subject to personal jurisdiction in the forum state from the very actions that Stern has been subjected to in this case.

2. Stern's special appearance was to have been first heard a year and a half ago in November 2008. Stern's counsel entered into a Rule 11 Agreement with Arthur's counsel wherein Stern agreed to postpone the November 2008 hearing until Arthur had an opportunity to depose him on jurisdictional issues. Stern repeatedly made himself available for a jurisdictional deposition, but Arthur repeatedly refused to take the opportunity to depose Stern on jurisdictional issues. Arthur has attempted to rely on the Rule 11 Agreement as a means for perpetually delaying a hearing on Stern's special appearance. In a March 20, 2009 hearing, Judge Tony Lindsay called the Rule 11 Agreement "irrelevant" insofar as it appeared to her to only postpone the November 2008 hearing and not to indefinitely delay a hearing on Stern's special appearance. (A true and correct copy of the relevant portions of the March 20, 2009 hearing transcript is attached hereto as Exhibit B.)

3. Not once has Arthur followed the process outlined for continuing a hearing on Stern's special appearance: filing affidavits stating that she could not present facts essential to justify her opposition to Stern's special appearance. See Tex. R. Civ. P. 120a(3). Yet, time and again, a hearing on Stern's special appearance has been continued in violation of Rule 120a(3).

4. In a previous telephone hearing with this Court, the Court indicated to the litigants that if the Court of Appeals were to determine that Arthur was entitled to the discovery pending before the Court of Appeals in Stern's mandamus proceeding, she may be entitled to that

information before deposing Stern. The Court also suggested that Arthur find another way to obtain information from the defendants other than an examination of the parties' hard drives. To that end, the Court encouraged Arthur and Stern to enter a Rule 11 Agreement through which Arthur could subpoena certain of Stern's emails directly from Yahoo! Per the Court's instructions, Stern's counsel drafted a Rule 11 Agreement, but Arthur's counsel refused to negotiate any of the terms of the agreement, claiming it would be a "fruitless endeavor to subpoena Yahoo!"

5. On April 22, 2010, the Court of Appeals granted Defendant Art Harris' petition for writ of mandamus, which involved an order nearly identical to the order that is the subject of Stern's mandamus petition and completely invalidated the trial court's appointment of a 'special master.' That same day, Stern noticed a hearing on his special appearance for June 4, 2010. The Court of Appeals' opinion in *In re Art Harris* is controlling authority in Stern's mandamus proceeding and indicates that Arthur will not be entitled to the discovery that is the subject of Stern's mandamus proceeding. Thus, Stern's special appearance is ripe for a hearing.

6. On May 3, 2010, Arthur complained that she was entitled to Stern's jurisdictional deposition prior to the June 4, 2010 hearing on Stern's special appearance. (A true and correct copy of Arthur's counsel's letter to Stern's counsel is attached hereto as Exhibit C.) That same day, Stern immediately made himself available for a jurisdictional deposition in Atlanta the week of May 10, 2010. (A true and correct copy of Stern's counsel's email to Arthur's counsel is attached hereto as Exhibit D.)

7. Arthur initially agreed with Stern's offer to be deposed in Atlanta, but first tried to set certain conditions on lines of questioning, apparently believing that Stern would not agree to be deposed on those lines. When Stern called Arthur's bluff and agreed to be questioned on those

issues, Arthur then demanded that the deposition take place in Peachtree City, Georgia – not Houston – at the offices of, Susan M. Brown, an attorney who is represented by counsel in a separate action in which Stern, in his capacity as Executor of the Estate of Anna Nicole Smith, has a pending motion seeking to add Brown as a defendant, in part, because she illicitly gave Arthur’s counsel property belonging to the Estate of Anna Nicole Smith. (See Exhibit E, which is a true and correct copy of an email chain between counsel for Stern and counsel for Arthur.)

8. In a telephone hearing with the Court on May 7, 2010, in which the Court was considering scheduling issues, counsel for Stern brought to the Court’s attention the issues surrounding the scheduling of Stern’s jurisdictional deposition. The Court suggested that Arthur depose Stern by telephone or, if the parties could not reach an agreement, urged the parties to call the Court to try to reach a resolution.

9. Arthur’s counsel, enraged at the “stunt” pulled during the telephone hearing, ignored all of the Court’s instructions to counsel and immediately noticed Stern’s deposition for May 14, 2010, in Houston at the offices of The O’Quinn Law Firm. (See Exhibit F, which is a true and correct copy of an email from Arthur’s counsel to Stern’s counsel.)

10. Forcing Stern, a litigant with a special appearance pending to personally appear in Houston with his counsel for a deposition imposes a financial burden on Stern. Not only would Stern have to fly from Los Angeles to Houston, Stern’s counsel would have to fly from Atlanta to Houston, compounding the expense to Stern. Moreover, given the 9:00 a.m. noticed time to start the deposition, Stern and his counsel would require overnight accommodations, again increasing the expense to Stern. Stern’s jurisdictional deposition should be taken by telephone or in Atlanta or Los Angeles. See Tex. R. Civ. P. 192.6(a). This Court should consider the travel

and lodging costs that Stern and his counsel would incur prior to compelling Stern to travel to Houston for a deposition. See Tex. R. Civ. P. 192.4.

11. Furthermore, Arthur deposed Stern on jurisdictional issues in *Arthur v. Stern*; In the United States District Court for the Southern District of Texas; Civil Action No. 4:07-CV-03742. As mentioned by Stern's counsel in the May 7, 2010 hearing before the Court, Stern has agreed that Arthur may use that jurisdictional deposition of Stern in this case. Therefore, any additional examination of Stern regarding jurisdictional issues should be minimal and the deposition should be short, thereby further obviating the need for Stern to incur the expense associated with travel to Houston for a jurisdictional deposition.

12. This Court has the inherent power to limit discovery. See Tex. R. Civ. P. 191.1; Tex. R. Civ. P. 192.4. The notice of deposition does not limit its scope. On its face, the notice of deposition appears to notice the deposition of Stern for merits as well as jurisdiction. Until Stern's special appearance is resolved, Stern submits that it is a waste of the parties' and the Court's resources to conduct a deposition of Stern on the merits of this action. Trial courts routinely limit the scope of depositions to jurisdictional issues until the defendant's special appearance is resolved. See, e.g., Citrin Holdings, LLC v. Minnis, 305 S.W.3d 269, 280 (Tex. App. – Houston [14th Dist.] 2009) (limiting scope of deposition to “any pending or potential transactions, and any efforts associated therewith, by any Defendant or affiliated person or entity, that would in any way affect, transfer, diminish, or dilute the assets made subject to Plaintiffs' claims”). Indeed, failing to hear a special appearance prior to compelling a defendant's appearance at a deposition on the merits is reversible error. See IRN Realty Corp. v. Hernandez, 300 S.W.3d 900, 901 (Tex. App. – Eastland 2009).

13. Furthermore, even if Stern were to appear in Houston for a deposition, Stern does not trust Arthur's counsel to refrain from attempting to serve Stern with process – for this case or some other harassing case they might try to dream up – while traveling to or from a deposition. If Stern is compelled to travel to Houston for a deposition, then he requests that this Court enter a protective order making clear that his travel to and from Texas, as well as any time spent there, is subject to his special appearance. See Citrin Holdings, LLC, 305 S.W.3d at 280 (appearance for jurisdictional deposition was subject to special appearance and plaintiff's attempts to serve defendant with process after his deposition was invalid).

This Motion has been filed by the third business day after service of the notice of deposition, and, therefore, Stern's deposition is STAYED until this Motion can be determined.

WHEREFORE, PREMISES CONSIDERED, Defendant Howard K. Stern respectfully requests that this Court QUASH Plaintiff Virgie Arthur's Notice of Intention to the Oral Deposition of Howard K. Stern and GRANT a protective order regarding the same. A proposed Order is submitted herewith.

Dated and served: May 10, 2010.

BRYAN CAVE LLP

By: /s/ L. Lin Wood  
\_\_\_\_\_  
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(214) 721-8100

Attorneys for Howard K. Stern

<http://bryancave.com>

**CERTIFICATION OF CONFERENCE**

I certify that prior to filing this Motion, I conferred with counsel for Plaintiff in an attempt to resolve this dispute. We were unable to resolve the dispute.

/s/ L. Lin Wood  
L. Lin Wood

<http://www.bplansplace.com>

**CERTIFICATE OF SERVICE**

I certify that a true copy of the above Defendant Howard K. Stern's Motion to Quash the Notice of Deposition of Defendant Howard K. Stern and Motion for Protective Order has been sent by email and US Mail on May 10, 2010, to:

Neil McCabe  
M. Michael Meyer  
The O'Quinn Law Firm  
440 Louisiana  
Suite 2300  
Houston, Texas 77002  
neilm@oqlaw.com  
Also served by Fax: 713-222-6903

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CBS Studios, Inc.*

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*Pro se*

Dated: May 10, 2010.

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1010 Lamar, Suite 450  
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*Attorneys for Defendant Larry Birkhead*

/s/ L. Lin Wood  
L. Lin Wood

VIRGIE ARTHUR,

Plaintiff,

v.

HOWARD K. STERN, BONNIE STERN, LYNDA HARRINGTON, ART HARRIS, NELDA TURNER, TERESA STEPHENS, LARRY BIRKHEAD, HARVEY LEVIN, TMZ PRODUCTIONS, INC., and CBS STUDIOS, INC.

Defendants.

§ IN THE DISTRICT COURT OF  
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§ HARRIS COUNTY, TEXAS  
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§ 80th JUDICIAL DISTRICT  
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**ORDER GRANTING DEFENDANT HOWARD K. STERN'S MOTION TO QUASH THE NOTICE OF DEPOSITION OF DEFENDANT HOWARD K. STERN AND MOTION FOR PROTECTIVE ORDER**

CAME ON TO BE CONSIDERED Defendant Howard K. Stern's Motion to Quash the Notice of Deposition of Defendant Howard K. Stern and Motion for Protective Order. The Court, having considered the Motion to Quash and Motion for Protective Order, and any response thereto, is of the opinion that for good cause the Motion to Quash and Motion for Protective Order should, in all things, be GRANTED.

IT IS THEREFORE ORDERED that the deposition of Howard K. Stern scheduled for May 14, 2010 is hereby quashed.

SIGNED this \_\_\_\_ day of \_\_\_\_\_, 2010.

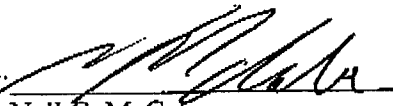
\_\_\_\_\_  
The Honorable Larry Weiman  
Judge, Harris County District Court

# EXHIBIT A

<http://www.splice.com>




Respectfully Submitted,  
**The O'Quinn Law Firm**

By: 

Neil C. McCabe  
State Bar No. 13335300  
M. Michael Meyer  
State Bar No. 13993850  
440 Louisiana, Suite 2300  
Houston, Texas 77002  
713-223-1000  
**Attorneys for Virgie Arthur**

**CERTIFICATE OF SERVICE**

This is to certify that on May 7, 2010, a true and correct copy of **Plaintiff's Notice of Intention to take the Oral Deposition of Howard K. Stern** was served to all parties as follows:

  
Neil McCabe

**Via Email and Fax**

Mr. Harry Susman  
Mr. Richard Hess  
Susman Godfrey LLP  
1000 Louisiana, 51<sup>st</sup> Floor  
Houston, Texas 77002  
(713) 651-9366  
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**Attorneys for TMZ Production, Inc.  
and Harvey Levin**

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**Attorneys for Howard K. Stern**

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**Attorneys for Art Harris and  
CBS Studios, Inc.**

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Houston, TX 77071

**Via Email**

Mrs. Nelda Turner, Pro Se  
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**Via Fax**

Q & A Court Reporting  
10220 Memorial Drive  
Houston, Texas 77024

<http://www.proseplace.com>

# EXHIBIT B

<http://www.splice.com>

REPORTER'S RECORD  
VOLUME 1 OF 1 VOLUME  
TRIAL COURT CAUSE NO. 2008-24181

VIRGIE ARTHUR ) IN THE DISTRICT COURT OF  
)  
vs. ) HARRIS COUNTY, T E X A S  
)  
HOWARD K. STERN, BONNIE )  
STERN, LYNDAL HARRINGTON, )  
ART HARRIS, NELDA TURNER, )  
TERESA STEPHENS, HARVEY )  
LEVIN, and TMZ )  
PRODUCTIONS, INC. ) 280TH JUDICIAL DISTRICT

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REPORTER'S RECORD

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On the 20th day of March, 2009, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable Tony Lindsay, Judge Presiding, held in Houston, Harris County, Texas.

Proceedings reported by computerized stenotype machine.

COPY

LETICIA TAFOLLA, DEPUTY COURT REPORTER  
280TH DISTRICT COURT

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## APPEARANCES

1  
2 NEIL McCABE  
SBOT NO. 13335300  
3 M. MICHAEL MEYER  
SBOT NO. 13993850  
4 CARL SHAW  
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8 Counsel for Plaintiff Virgie Arthur

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12 Fourteenth Floor  
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13 Atlanta, Georgia 30309-3488  
Telephone: 404-572-6600  
14 Counsel for Defendant Howard K. Stern

15 SCOTT McLAUGHLIN  
SBOT NO. 00791234  
16 AMANDA BUSH  
SBOT NO. 24042161  
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Telephone: 713-752-4200  
19 Counsel for Plaintiff Art Harris  
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VOLUME 1  
REPORTER'S RECORD

March 20, 2009

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LETICIA TAFOLLA, DEPUTY COURT REPORTER  
280TH DISTRICT COURT

1 to bring it on for a hearing.

2 THE COURT: Okay.

3 MR. McCABE: Your Honor, there's no  
4 inconsistencies. I don't know what inconsistencies  
5 Mr. Wood is trying to point out.

6 We informed counsel for Mr. Harris  
7 that we thought they were not supposed to go ahead  
8 with discovery. That's consistent with what we  
9 understood from the Court, that they were not  
10 supposed to go ahead with the discovery. They went  
11 ahead anyway with a secret sworn statement taken  
12 without us being there and they are entitled to do  
13 that. So they haven't been stymied in their  
14 discovery.

15 I noticed that none of that discovery  
16 which they complain today about our having stifled  
17 had anything to do with jurisdiction. They didn't  
18 ask the person that they did take a statement from  
19 anything about jurisdiction.

20 Now, I do have to point out to the  
21 Court this Rule 11 agreement is on file and it's my  
22 position that Mr. Wood by urging the Court to go  
23 ahead and rule in favor of his client on the special  
24 appearance has violated the Rule 11 agreement. By  
25 the way, Your Honor, not to put too fine a point on

LETICIA TAFOLLA, DEPUTY COURT REPORTER  
280TH DISTRICT COURT

1 it but not only the parties are bound by the Rule 11  
2 agreement that's been filed with the Court. The law  
3 says that the Court is bound by it as well and so --

4 THE COURT: So the parties can have a  
5 Rule 11 agreement that says, We're just not going to  
6 go to trial so there, Judge.

7 MR. McCABE: I've never seen one of  
8 those, Your Honor, and I wouldn't want to try to  
9 support one of those, but I think this is a perfectly  
10 valid Rule 11 agreement and I believe Mr. Wood has  
11 violated this by urging the Court to go ahead with it  
12 today.

13 If there was a misunderstanding about  
14 the ability of the plaintiff to actually get Court  
15 assistance in a motion to compel the production of  
16 his client's computer, which is -- we regard as  
17 essential before a deposition would be meaningful,  
18 then I apologize if it was a -- the misunderstanding  
19 was our fault, but we have done what any sensible  
20 lawyer would, which is try to compel the paper, or in  
21 this case electronic discovery and were told by the  
22 Court to put off the hearing and that's why we're in  
23 this position today.

24 If we're -- we're late filing the  
25 response, which I think will be very helpful to the

LETICIA TAFOLLA, DEPUTY COURT REPORTER  
280TH DISTRICT COURT

1 Court, then I ask leave of the Court to consider our  
2 response filed today nevertheless.

3 MR. WOOD: Just briefly, Your Honor.  
4 I thought I made it clear. When Mr. McCabe asked me  
5 about filing -- if I would oppose his motion for  
6 continuance, I told him I would not. I haven't urged  
7 this matter to go forward but I believe that Your  
8 Honor set the hearing date and it is Your Honor that  
9 has urged the parties and instructed the parties to  
10 be ready. So we came here ready.

11 I don't believe I violated the Rule 11  
12 and I do believe Your Honor is not bound to sit  
13 around and wait forever for Mr. McCabe to finally a  
14 year or two from now ask for Mr. Stern's deposition  
15 and then be able to set this down for a special  
16 appearance. I think Your Honor has control of -- of  
17 the Court's docket and I think that Your Honor's  
18 order does not allow for un -- inordinate delay and  
19 I've yet to hear any excuse as to why those actions  
20 have not been undertaken with Mr. Stern. We've  
21 always been ready to let him be deposed in a timely  
22 fashion.

23 THE COURT: I see that this Rule 11  
24 agreement has to do with putting off the hearing from  
25 November the 21st which we did, indeed, put off and

LETICIA TAFOLLA, DEPUTY COURT REPORTER  
280TH DISTRICT COURT

1 it's been November, December, January, February,  
2 March, four months since then.

3 Okay. I would like to hear from you  
4 guys if you got anything to say.

5 MS. BUSH: Your Honor, we entered the  
6 case on February 2nd. At that time you had already  
7 entered -- or the December 11th hearing had already  
8 taken place at which you compelled Art Harris and a  
9 couple of other defendants to either produce  
10 documents that were responsive to a couple of  
11 requests for production or you said they could  
12 produce a hard drive to Mr. McCabe and you appointed  
13 a special master.

14 Two weeks later -- actually, almost  
15 about a month and a half later you entered the order  
16 that Mr. McCabe submitted and after we came into the  
17 case and we read the transcript and then we read the  
18 order, we realized how inconsistent they are. We,  
19 therefore, filed a motion to clarify that order to  
20 make sure that we were all on the same page and that  
21 order was -- I mean, that motion was set on the 6th  
22 of February and that motion, in addition to the  
23 motion to compel and everything else that was set  
24 that day, was passed because of Judge -- because of  
25 Bonnie Stern's filing for bankruptcy five days

LETICIA TAFOLLA, DEPUTY COURT REPORTER  
280TH DISTRICT COURT

1 MS. BUSH: I haven't seen it.

2 THE COURT: She sent it to Mr. McCabe,  
3 to Ms. Stephens, to Harry Susman, to Bonnie Stern,  
4 Lyndal Harrington.

5 Ms. Harrington, did you get anything  
6 from them?

7 MS. HARRINGTON: No, I did not.

8 THE COURT: Earl Nesbitt, Charles  
9 Babcock and Lin Wood.

10 MR. McCABE: I'll be happy to give  
11 Ms. Marshall a call.

12 THE COURT: Okay. Give her a call and  
13 she's got an affidavit in here from him. Like I say,  
14 I would have figured you would have gotten your copy,  
15 but if you haven't, presumably you'll have them at  
16 least by Monday, but give her a call and this -- this  
17 is a Rule 11 agreement which probably is kind of  
18 irrelevant now since it had to do with a hearing that  
19 we didn't have on November the 21st but you can have  
20 it back.

21 MR. McCABE: Yes, Your Honor. It's in  
22 your file anyway. I understand the Court's view of  
23 the relevancy of it.

24 THE COURT: Okay. Okay. So the next  
25 thing that's going to happen is I'm going to see you

# EXHIBIT C

<http://www.splice.com>

May 3, 2010

Via Email and Regular Mail

Mr. L. Lin Wood  
Mr. Luke Lantta  
Mr. Walter Herring  
Bryan Cave  
One Atlantic Center, 14<sup>th</sup> Floor  
1201 West Peachtree Street, NW  
Atlanta, GA 20209

Re: Arthur v. Stern, et al.; Cause No. 2008-24181 pending in the 80<sup>th</sup> Judicial  
District Court of Harris County, Texas

Dear Mr. Wood,

I received your notice of a hearing set for June 4, 2010, for Mr. Stern's special appearance. Your action in setting the special appearance before the deposition of Mr. Stern has been taken is in violation of the Rule 11 agreement filed with the court Nov. 19, 2008, and which Judge Weiman read to you over the phone during a hearing on March 12, 2010, at which time he ruled from the bench that Arthur is entitled to get the discovery that she is seeking from you before Mr. Stern's special appearance is heard.

Please withdraw the hearing notice and pass the hearing or give me dates as soon as possible prior to June 4, 2010 for Mr. Stern's jurisdictional deposition.

Sincerely yours,

THE O'QUINN LAW FIRM



Neil McCabe

NCM/lc

# EXHIBIT D

<http://www.billsplace.com>

**Lantta, Luke**

---

**From:** Lantta, Luke  
**Sent:** Monday, May 03, 2010 2:18 PM  
**To:** 'Neil McCabe'  
**Cc:** 'Lilly Cadena'; 'susieh@oqlaw.com'; Wood, Lin; Lyle, B.  
**Subject:** Stern Jurisdictional Deposition

Neil:

We are in receipt of your letter requesting dates for the jurisdictional deposition of Mr. Stern. With the exception of Monday, Mr. Stern can be available in Atlanta any day next week for a jurisdictional deposition.

Luke

**Luke A. Lantta**  
**Bryan Cave Powell Goldstein**

One Atlantic Center | Fourteenth Floor | 1201 West Peachtree Street, NW | Atlanta, GA 30309-3488  
t: 404.572.6868 | f: 404.420.0868 | e: luke.lantta@bryancave.com

5/10/2010

# EXHIBIT E

<http://www.billsplace.com>

**Lantta, Luke**

---

**From:** Lantta, Luke  
**Sent:** Thursday, May 06, 2010 3:51 PM  
**To:** 'Neil McCabe'  
**Cc:** 'Lilly Cadena'; 'susieh@oqlaw.com'; Wood, Lin; Lyle, B.; Michael Meyer  
**Subject:** RE: Stern Jurisdictional Deposition

Neil:

While I understand why you may want the deposition to take place at Susan Brown's offices in Peachtree City (and not Atlanta where we agreed to have Mr. Stern present), given the pending motion to add your colleague, Ms. Brown, as a party to the South Carolina action regarding property belonging to the Estate of Anna Nicole Smith, I do not think it appropriate to have Mr. Stern deposed at the offices of someone unrelated to the Arthur litigation whom we are seeking to add as a defendant to a separate matter. Moreover, courtesy and custom dictate that Mr. Stern's deposition occur at our offices. In all of the litigation over these past several years, not once have we sought to depose one of your clients or associates (Virgie Arthur, John O'Quinn, Don Clark, and Wilma Vicedomine) anywhere other than at The O'Quinn Firm and I would expect the same courtesy from you.

Luke

---

**From:** Neil McCabe [mailto:neilm@oqlaw.com]  
**Sent:** Thursday, May 06, 2010 3:39 PM  
**To:** Lantta, Luke  
**Cc:** 'Lilly Cadena'; 'susieh@oqlaw.com'; Wood, Lin; Lyle, B.; Michael Meyer  
**Subject:** Re: Stern Jurisdictional Deposition

Luke,

I agree to depose Mr. Stern on May 14, 2010 on the Weekley Homes line of questioning, previously outlined, including his "discarded" computer, to which you have agreed. I, not you, will make the arrangements. The deposition will be at Susan Brown's office. I will serve formal notice tomorrow.

Neil

Lantta, Luke wrote:

Neil:

While we do not think that your questions outlined below have anything to do with jurisdiction or the issues to be presented during a hearing on the special appearance you have somehow managed to delay for approximately 2 years, we will agree to make Mr. Stern available on May 14, 2010, in Atlanta to answer the line of questioning you set out below.

As for the production of documents you request, Mr. Stern cannot produce documents that do not exist. Therefore, there will not be a production of documents regarding the disposition of the discarded computer. If you want to ask Mr. Stern about it, that is one thing (subject to and without waiver of objections to Ms. Arthur's First Interrogatories) but to have documents regarding a device discarded - let alone one discarded over 2 years ago - is nonsensical.

I can provide you with the message Mr. Stern forwarded to Bonnie Tiegel on March 21, 2007.

Please let me know if you intend to notice Mr. Stern's deposition so we can begin making appropriate arrangements to accommodate everyone. Given the parameters to which we have agreed, I cannot see why you would again choose to forgo deposing Mr. Stern on jurisdictional issues. As for cooperation and Mr. Stern's conduct in these proceedings, your self-serving, defamatory statements regarding Mr. Stern's conduct are once again belied by the record.

Luke

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**From:** Neil McCabe [mailto:neilm@oqlaw.com]  
**Sent:** Thursday, May 06, 2010 12:07 PM  
**To:** Lantta, Luke  
**Cc:** 'Lilly Cadena'; 'susieh@oqlaw.com'; Wood, Lin; Lyle, B.; Michael Meyer  
**Subject:** Re: Stern Jurisdictional Deposition

Luke,

Thank you for your legal analysis of the opinion in *In re Art Harris*, but I take a different view of it. The Harris opinion does not say that we cannot access the data on Harris's computers. It says that we cannot do so without following the steps set out in the Weekley decision. As I made clear to the trial court at the hearing on April 30, if the Harris opinion stands, or if, in light of my motion for rehearing, a new opinion is issued with the same result, we will approach the trial court about a Weekley hearing, and we will be able to satisfy Weekley. You were not present in court that day, except by phone, and therefore you did not see that the trial judge fully appreciated what I was saying.

Mr. Stern's mandamus action is different from Harris's, especially because he did not disclose that the computer to which we have been seeking access for a year supposedly was "discarded" in October 2007, according to Mr. Stern. As you know, I have asked the court of appeals to dismiss Mr. Stern's mandamus petition for that reason. The fact that the court of appeals did not decide Mr. Stern's mandamus action at the same time as it issued the opinion in Harris's proceeding might be some indication that the justices see a distinction between Harris's case and Mr. Stern's. Even if Mr. Stern's mandamus action results in a disposition similar to the Harris opinion of April 22, 2010, that would mean only that we would approach the trial court about access to Mr. Stern's computer through the Weekley process.

As shown in the amended objections and responses that your firm served on us on Mar. 10, 2010, your client is declining to provide information about his computers, although such information should be provided informally under the Weekley decision, even before a formal discovery request has been made. If I were to take Mr. Stern's jurisdictional deposition, I would ask Mr. Stern about what happened to his "discarded" computer, what were its systems, etc. I also would ask him to bring to the deposition, or to provide beforehand, documentary evidence of the disposition of the computer, including any proof of the date it was discarded, the method of disposition, etc., including what happened to the hard drive. (No lawyer would discard a hard drive.) I also request, for purposes of any deposition, the forwarded message attached to Mr.

Stern's email of 3-21-07 to Bonnie Tiegel. (See attachment.) Please advise whether your client will cooperate with that line of inquiry and will produce such documents. If so, it might be worthwhile to take a limited deposition next week, say Friday the 14th. If not, I will make formal discovery requests and take it from there.

Because of your client's history - and that of his co-conspirators - of non-cooperation, non-disclosure, concealment, and destruction of evidence, I do not expect cooperation now. Unless you can persuade me not to do so, I will file a motion to cancel or to continue the hearing on the special appearance, citing, among other things, your blatant violation of the Rule 11 agreement.

Neil

Lantta, Luke wrote:

Neil:

I have not heard from you on whether you intend to depose Mr. Stern next week on jurisdictional issues. We have given you a week of availability for a jurisdictional deposition of Mr. Stern. The court indicated that it would hear Mr. Stern's special appearance when it had an indication of what the Court of Appeals was going to do with respect to the mandamus petitions. By virtue of the Court of Appeals' opinion in *In re Art Harris*, you are not going to be entitled to an examination of Mr. Stern's hard drive. You have once again been given an opportunity to depose Mr. Stern, if you again pass on this opportunity that is your option, but you have been given several opportunities to conduct this deposition and there are no pending discovery issues concerning Mr. Stern's special appearance. We are not going to remove the hearing on Mr. Stern's special appearance from the calendar.

Luke

---

**From:** Lantta, Luke  
**Sent:** Monday, May 03, 2010 2:18 PM  
**To:** 'Neil McCabe'  
**Cc:** 'Lilly Cadena'; 'susieh@oqlaw.com'; Wood, Lin; Lyle, B.  
**Subject:** Stern Jurisdictional Deposition

Neil:

We are in receipt of your letter requesting dates for the jurisdictional deposition of Mr. Stern. With the exception of Monday, Mr. Stern can be available in Atlanta any day next week for a jurisdictional deposition.

Luke

**Luke A. Lantta**  
**Bryan Cave Powell Goldstein**

One Atlantic Center | Fourteenth Floor | 1201 West Peachtree Street,  
NW | Atlanta, GA 30309-3488  
t: 404.572.6868 | f: 404.420.0868 | e: [luke.lantta@bryancave.com](mailto:luke.lantta@bryancave.com)

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bcllp2010

# EXHIBIT F

<http://www.splice.com>

**Lantta, Luke**

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**From:** Neil McCabe [neilm@oqlaw.com]  
**Sent:** Friday, May 07, 2010 2:12 PM  
**To:** Wood, Lin  
**Cc:** Lantta, Luke; Lilly Cadena; susieh@oqlaw.com; Lyle, B.; Michael Meyer  
**Subject:** Re: Stern Jurisdictional Deposition

Lin,

Under the Texas Rules of Civil Procedure, Rule 199.2(b)(2)(C), I can designate the county of suit as the place for a deposition of a party.

Besides, Atlanta is convenient only for you. The other lead lawyers all are in Houston.

Also, "Southern hospitality" is not what Rob Klein and I remember receiving at your Atlanta office. You excluded Rob, while letting Krista sit in, although she was not a lawyer in the case.

Further, the stunt you pulled in bringing our negotiations up before the court today, without notice, including the misrepresentations you made to the court, really was too much.

On further reflection, a phone deposition will not work for me, because it would require me to trust you more than I can allow myself to do, in the interests of my client. I will have to be in the same room with you and your client.

Please give me some dates for Mr. Stern's deposition at my firm in Houston.

Neil

Wood, Lin wrote:

Neil,

You were treated very well in my office and there was no discourtesy at all. The record and all attendees will confirm this to be true. You cannot compel Mr. Stern to travel to Houston but if you agree to pay his travel expenses, I will consider that location.

My office in Atlanta is the most convenient for everyone and it appears that all of our schedules work for the 14th. Let's save fights for significant issues. The point is do you want to get this deposition done without further delay? If so, come on over to my office and let's get it done. You will be treated with Southern hospitality and you know it.

Okay?

Lin

Sent from my iPhone

On May 6, 2010, at 5:41 PM, "Neil McCabe" <neilm@oqlaw.com> wrote:

5/10/2010

Lin,

The 14th is the only day next week on which I could be in the Atlanta area for Mr. Stern's deposition. Monday I have court here. Tuesday I travel to Kilgore for Mrs. Turner's deposition on Wednesday. Thursday I could travel to Atlanta for Mr. Stern's deposition on Friday. I was willing to accommodate you by having the deposition in your area at Susan Brown's office, but Luke has sent me an email indicating that your firm is not willing to appear there, and you have emailed me saying that the deposition must be at your offices if it is to be on the 14th. I am not willing to return to your offices in Atlanta, where I was treated discourteously by you at Mr. Stern's deposition in the federal case in January 2008.

Under the Texas Rules of Civil Procedure, Rule 199.2(b)(2)(C), I will designate this firm's offices in Houston as the place for Mr. Stern's deposition. Please let me know when you can make Mr. Stern available here.

I take it that you are opposed my plan to file a motion to continue or to cancel the special appearance hearing that you set for June 4, 2010, in violation of our Rule 11 agreement.

Neil

Wood, Lin wrote:

You will have to depose Mr. Stern at my law offices, Neil, in order to take it on the 14th.

Sent from my iPhone

On May 6, 2010, at 3:38 PM, "Neil McCabe"  
<[neilm@oqlaw.com](mailto:neilm@oqlaw.com)> wrote:

Luke,

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jurisdiction or the issues to be presented during a hearing on the special appearance you have somehow managed to delay for approximately 2 years, we will agree to make Mr. Stern available on May 14, 2010, in Atlanta to answer the line of questioning you set out below.

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Luke

**Luke A. Lantta**  
**Bryan Cave**  
**Powell**  
**Goldstein**

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| Fourteenth Floor |  
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NW | Atlanta, GA  
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t: 404.572.6868 | f:  
404.420.0868 |  
e: [luke.lantta@bryancave.com](mailto:luke.lantta@bryancave.com)

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