

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

SECOND AMENDMENT FOUNDATION  
NATIONAL RIFLE ASSOCIATION  
OF AMERICA, INC., et al.,

CIVIL ACTION

VERSUS

NO: 05-4234

C. RAY NAGIN, Mayor of New  
Orleans, and WARREN RILEY,  
Superintendent of Police,  
New Orleans

SECTION: "J"

ORDER AND REASONS

Before the Court is and **Plaintiff's Motion to Hold Defendants C. Ray Nagin and Warren Riley in Contempt for Failure to Provide Initial Disclosures and to Compel Answers to Discovery** (Rec. Doc. 42). This motion, which was opposed, was set for hearing without oral argument on January 31, 2007. Upon review of the record, the memoranda of counsel, and the applicable law, this Court now finds that Plaintiffs' motion should be granted in part to the extent noted herein.

Background and Argument

On November 9, 2006, Plaintiffs National Rifle Association and the Second Amendment Foundation, Inc. timely provided initial disclosures to Defendants Ray Nagin and Warren Riley. Pursuant to the Court's November 29, 2006 scheduling order, the deadline for exchanging initial disclosures was December 12, 2006. However, Defendants did not provide Plaintiffs with initial disclosures on or before that day.

On December 14, 2006, Plaintiffs' counsel left a voice

message for defense counsel inquiring about the initial disclosures that were not provided. Defense counsel did not return the call. After receiving no return phone call, on December 19, 2006, Plaintiffs' counsel sent a letter to defense counsel inquiring about initial disclosures. In the letter, Plaintiffs' counsel requested a brief telephone conference the following day at 3:00 p.m. to discuss the issue. The letter stated that if defense counsel was unavailable at that time to call and reschedule. Plaintiffs' counsel also propounded interrogatories and requests for production to Defendants on this day. On December 20, 2006, when Plaintiffs' counsel called defense counsel for the scheduled conference, he was told that defense counsel was unavailable.

On January 8, 2007, Plaintiffs' counsel sent a second letter to defense counsel inquiring about initial disclosures and answers to discovery<sup>1</sup>. Plaintiffs' counsel again requested a brief telephone conference the following day at 3:00 p.m. to discuss the issues. The letter, again, stated that if defense counsel was unavailable at that time to call and reschedule. Letter was sent by fax, email, and regular mail. However, when Plaintiffs' counsel called defense counsel on January 9, 2007 for the scheduled conference, he was told that defense counsel was unavailable. As of the day Plaintiffs filed this motion (January

---

<sup>1</sup> In the motion, Plaintiffs seem to indicate that the answers to discovery were late because fifteen days had elapsed. This Court notes that the rule in federal court allows for thirty days, which would have made answer due January 18, 2007. This Court also notes that despite this observation, defense counsel was still untimely in providing discovery responses to Plaintiffs.

11, 2007), defense counsel still had not provided the requested discovery or initial disclosures and still had not responded to the various calls or letter of Plaintiffs' counsel.

Plaintiffs have moved this Court to find Defendants in contempt for failing to provide initial disclosures and discovery responses. Plaintiffs also move to compel Defendants to submit answers to same. Plaintiffs have requested costs associated with their attorneys having to file this motion. Specifically, Plaintiffs explain that their counsel has spent 15.6 hours researching issues and preparing the documents for this motion. Plaintiffs' counsel also asserted that he would likely spend approximately six hours preparing for the hearing and traveling to New Orleans to argue the motion. Plaintiffs' counsel's rate is \$175/hour, which would equal a total of \$3,780 in costs.

In Defendants' opposition, which the Court notes was also untimely, defense counsel "acknowledges his failure to timely respond to Plaintiffs' discovery requests and to timely file Rule 26 disclosures." (See Opposition, p. 1). He also states that he "cannot assert any good cause for such failure." He does, however, state that the discovery responses and initial disclosures have since been provided.

### **Discussion**

The Code of Professionalism, which was adopted by the Judges of the Eastern District of Louisiana on August 4, 1999 states, in pertinent part, "I will be punctual in my communication with clients, other counsel and the court, and in honoring scheduled appearances." Further, the Federal Rules of Civil Procedure

state, "If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions." Fed. R. Civ. P. art. 37(a)(2)(A).

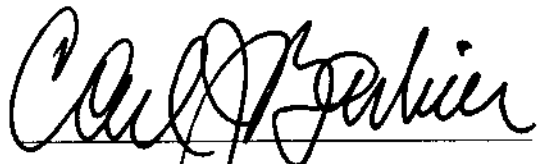
Here, defense counsel failed to timely answer discovery requests or provide initial disclosures. Defense counsel also ignored the repeated requests of Plaintiffs' counsel to discuss the matter. Had defense counsel actually agreed to discuss the matter with Plaintiffs' counsel, the parties potentially could have come to some agreement - before having to seek the intervention of the Court. Defense counsel has caused time and money to be wasted by Plaintiffs' counsel and further admits that he has "no good reason" to explain his behavior.

This type of conduct is wholly unprofessional and shall not be condoned. The Court finds counsel's requested hourly rate to be reasonable. However, the Court concludes that 15.6 hours is too long to have spent on this motion, which did not require extensive legal research. The Court concludes that one-half of the amount of time claimed is reasonable - specifically, 7.8 hours. Thus, this Court awards Plaintiffs the costs of their counsel preparing this motion for 7.8 hours at \$175/hour = \$1,365. This Court declines to award costs for preparing for the hearing and driving to New Orleans because no hearing was held. Accordingly,

**IT IS ORDERED that Plaintiff's Motion to Hold Defendants C. Ray Nagin and Warren Riley in Contempt for Failure to Provide Initial Disclosures and to Compel Answers to Discovery (Rec. Doc. 42) should be and are hereby GRANTED IN PART and DENIED IN PART.**

Plaintiffs are awarded costs in the amount of \$1,365. This award shall be paid by defense counsel within ten days from the date of this order. Confirmation of payment shall be made to the Court and opposing counsel.

New Orleans, Louisiana this 12<sup>th</sup> day of February, 2007.



CARL J. BARBIER  
UNITED STATES DISTRICT JUDGE