

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

BRANDON FINCHUM,
Plaintiff,

V.

NACOGDOCHES COUNTY,
Defendant.

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CIVIL ACTION NO. 9:21-CV-285

JURY DEMANDED

DEFENDANT'S MOTION TO COMPEL DEPOSITION OF PAUL ANDERSON

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendant Nacogdoches County and files this its Motion to Compel Deposition of Paul Anderson pursuant to Federal Rule of Civil Procedure 37, and in support thereof, would show unto the Court as follows:

1. On November 7, 2021, Plaintiffs Brandon Finchum ("Finchum") and Attorney Paul Anderson ("Anderson") filed the present lawsuit against Defendant alleging violations of the Federal Wiretap Act, Texas Wiretap Act, State law, and the First, Fourth, Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution. (Doc. 1). The claims are based on phone calls Finchum made from his Nacogdoches County Jail cell to Anderson's office which they claim are protected by the attorney-client privilege. In the Joint Conference Report, Defendant noted its intention to depose Anderson. (Doc. 9, p. 4).
2. Since that time, Anderson moved to have his personal claims dismissed without prejudice. (Doc. 13). The Court granted the dismissal of Anderson's claims on April 27, 2022, without prejudice. (Doc. 15).

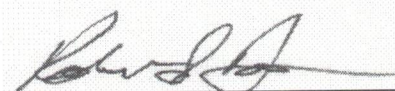
3. On May 9, 2022, counsel for Defendant sent a letter to Anderson requesting dates for Anderson and Finchum's deposition. See Exhibit A. On May 13th, Anderson's assistant called with a time frame for Finchum's deposition. We responded on May 16th that we would like to take Finchum's deposition first, and gave available dates we could take Finchum's deposition. See Exhibit B. The date for Finchum's deposition was confirmed later that day. See Exhibit C.
4. On May 24th, an email was sent to Anderson's office asking for Anderson's availability for his own deposition on June 21, 22, 23 or 24. See Exhibit D. No response was given. Instead, we received a request on May 26th to take John Fleming's deposition on the above dates. See Exhibit E, pp. 4-5. We responded on May 27th that we were checking on dates for Fleming but would like to take Anderson's deposition prior to Fleming's. *Id* at 4. Additional emails were exchanged on the subject which ended with Anderson stating that he objected to his deposition and he is not available for his deposition. *Id* at 1.
5. The parties conferred about the depositions on June 3rd following Finchum's deposition. Anderson informed the undersigned that new counsel would be appearing the following week to prosecute Finchum's case, and it was the undersigned's understanding that the depositions would be discussed then.
6. However, on June 7th, Anderson again requested dates for Fleming's deposition. An email exchange ensued wherein, Anderson stated he would not agree to be deposed by the undersigned. The parties have conferred by email, in person and by phone in an attempt to resolve this issue.

7. The content of phone calls at issue in this case and the knowledge of Anderson with respect to these phone calls are essential parts of Plaintiff's case and Defendant's defense. Of particular importance to Defendant is that each of the phone calls is expected to start with an announcement to both parties that the call is subject to monitoring and recording. With this notice, any potential attorney/client privilege is waived. Aside from the obvious waiver, Anderson has knowledge regarding when he became Finchum's attorney and if the call represented a "client" seeking legal advice or if the call involved another purpose such as scheduling. Anderson also has knowledge that during the relevant time period, all telephone calls were recorded. Because of the claims Plaintiff is making in this case, Defendant is entitled to question both parties to the calls about the phone calls.

WHEREFORE, Defendant respectfully requests that this honorable Court order Paul Anderson to present himself for deposition within a reasonable time. Defendant also requests any further relief that the Court deems necessary and just and that Defendant is so entitled.

Respectfully submitted,

FLOWERS DAVIS, P.L.L.C.
1021 ESE Loop 323, Suite 200
Tyler, Texas 75701
(903) 534-8063
(903) 534-1650 Facsimile



ROBERT S. DAVIS
State Bar No. 05544200
rsd@flowersdavis.com
Lead Attorney

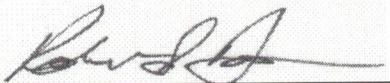
ROBIN HILL O'DONOGHUE
State Bar No. 09652220
rho@flowersdavis.com

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing instrument was served upon all counsel of record in the above entitled and numbered cause on June 23, 2022, in the following manner:

X Via ECF



Robert S. Davis

CERTIFICATE OF CONFERENCE

The undersigned confirms that he has met and conferred with Plaintiff's Counsel in good faith about this Motion and the Motion is opposed. Specifically, in addition to the attached exhibits, all counsel participated in an in-person conference on June 3, 2022, and phone conferences on June 14, 2022 and June 22, 2022 and no agreement could be reached regarding Anderson's deposition.



Robert S. Davis

FLOWERS ✦ DAVIS, P.L.L.C.

CELIA C. FLOWERS
MELANIE S. REYES
WILLIAM R. KNIGHT, JR.
J. SCOTT MILLER
CATHERINE CHESLEY GOODGION
COREY R. KELLAM
MAYA P. JEDLICKA
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PAUL H. BROWN
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CHAD C. ROOK
LEE I. CORREA
PRESTON W. MCGEE
ROBIN H. O'DONOGHUE
J. MITCHELL BEARD
STEVE M. MASON
JOHN "JACK" R. FULGHAM

IMMIGRATION:
VIRGINIA D. YOUNG
DANIEL C. ROSS
TELEPHONE: (903) 592-8186

May 9, 2022

Via Email: paul@paulandersonlaw.com

Paul Anderson
PAUL ANDERSON, PLLC
601 North Street
Nacogdoches, Texas 75961

Re: Civil Action No. 9:21-CV-285; *Paul V. Anderson and Brandon Finchum v. Nacogdoches County, et al.*; In the United States District Court for the Eastern District of Texas, Lufkin Division.

Dear Mr. Anderson:

Please provide dates in early June that your client and you are available for deposition in the above-referenced case.

We look forward to hearing from you.

Very truly yours,



Robin Hill O'Donoghue

RHO:rl0

Exhibit "A"

From: [Rachel L. Oden](mailto:Rachel.L.Oden)
To: "paralegal@paulandersonlaw.com"
Cc: [Robin H. O'Donoghue](mailto:Robin.H.O'Donoghue); "paul@paulandersonlaw.com"; "[Beverly Lynn Tillman, JD, PhD](#)"
Subject: 9:21-CV-285; Anderson and Finchum v. Nacogdoches County, et al. - Deposition Dates
Date: Monday, May 16, 2022 11:23:00 AM
Importance: High

Hi Sabrina,

We would like to take Plaintiff's deposition first. We are available to take Mr. Finchum's deposition on any of the following dates: June 2, 3, and 8. Please let us know if any of these dates work for Mr. Anderson and the Jasper County Jail.

Sincerely,

Rachel Oden

Legal Assistant to Robin O'Donoghue
and John "Jack" R. Fulgham
Flowers Davis, P.L.L.C.
1021 ESE Loop 323, Suite 200
Tyler, Texas 75701
(903) 534-8063
(903) 534-1650 (fax)
rlo@flowersdavis.com

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Exhibit "B"

From: paralegal@paulandersonlaw.com
To: [Rachel L. Oden](mailto:Rachel.L.Oden)
Cc: paul@paulandersonlaw.com
Subject: RE: 9:21-CV-285; Anderson and Finchum v. Nacogdoches County, et al. - Deposition Dates
Date: Monday, May 16, 2022 12:18:52 PM

Ms. Rachel,

June 3rd works for Mr. Anderson morning, or afternoon. I also reached out to the Jasper County Jail and June 3rd also works for them. The conference room will be available for that day. Lana Lee is the Jail administrator and her email address is lana.lee@co.jasper.tx.us

She would like you to send her an email so she can schedule that date. This is also the email address to send the Notice of Deposition, List of people attending, and equipment being used at the deposition. All parties must be on the submitted list and bring an ID.

Let me know if you need me to send anything or if you have any questions. Thanks!

** Attending for Plaintiff will be Paul V. Anderson (attorney) & Sabrina A. Hudson (paralegal)

From: Rachel L. Oden <rl@flowersdavis.com>
Sent: Monday, May 16, 2022 11:23 AM
To: 'paralegal@paulandersonlaw.com' <paralegal@paulandersonlaw.com>
Cc: Robin H. O'Donoghue <rho@flowersdavis.com>; 'paul@paulandersonlaw.com' <paul@paulandersonlaw.com>; 'Beverly Lynn Tillman, JD, PhD' <drillman@paulandersonlaw.com>
Subject: 9:21-CV-285; Anderson and Finchum v. Nacogdoches County, et al. - Deposition Dates
Importance: High

Hi Sabrina,

We would like to take Plaintiff's deposition first. We are available to take Mr. Finchum's deposition on any of the following dates: June 2, 3, and 8. Please let us know if any of these dates work for Mr. Anderson and the Jasper County Jail.

Sincerely,

Rachel Oden

Legal Assistant to Robin O'Donoghue

Exhibit "C"

and John "Jack" R. Fulgham
Flowers Davis, P.L.L.C.
1021 ESE Loop 323, Suite 200
Tyler, Texas 75701
(903) 534-8063
(903) 534-1650 (fax)
rd@flowersdavis.com

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From: [Rachel L. Oden](#)
To: "paralegal@paulandersonlaw.com"
Cc: [Robin H. O'Donoghue](#)
Subject: 9:21-CV-285; Finchum v. Nacogdoches County
Date: Tuesday, May 24, 2022 10:11:00 AM

Hi Sabrina,

We would like to depose Mr. Anderson on one of the following dates: June 21, 22, 23, or 24. Please let me know if Mr. Anderson would be available for deposition on one of those dates. Thank you!

Sincerely,

Rachel Oden

Legal Assistant to Robin O'Donoghue
and John "Jack" R. Fulgham
Flowers Davis, P.L.L.C.
1021 ESE Loop 323, Suite 200
Tyler, Texas 75701
(903) 534-8063
(903) 534-1650 (fax)
rlo@flowersdavis.com

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Exhibit "D"

From: paul@paulandersonlaw.com <paul@paulandersonlaw.com>
Sent: Wednesday, June 01, 2022 3:01 AM
To: Robin H. O'Donoghue <rho@flowersdavis.com>
Cc: 'Beverly Lynn Tillman, JD, PhD' <drillman@paulandersonlaw.com>; Robert S. Davis <rsd@flowersdavis.com>
Subject: RE: Finchum Vs. Nacogdoches 9:21-CV-285; John Fleming Deposition- Proposed dates

Ms. O'Donoghue,

I am not stating the obvious. I am not available for deposition, and I will not argue with you about it unless we are in front of the judge.

Please identify the "non-lawyer employee" John Fleming refers to in his May 19 email. We would like to take that person's deposition.

Paul Anderson
Paul Anderson, PLLC
601 North Street
Nacogdoches, Texas 75961
paul@paulanderson.law
936.305.5600

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From: Robin H. O'Donoghue <rho@flowersdavis.com>
Sent: Tuesday, May 31, 2022 5:52 PM
To: 'paul@paulandersonlaw.com' <paul@paulandersonlaw.com>
Cc: 'Beverly Lynn Tillman, JD, PhD' <drillman@paulandersonlaw.com>; Robert S. Davis <rsd@flowersdavis.com>; paralegal@paulandersonlaw.com; Rachel L. Oden

<rlo@flowersdavis.com>

Subject: RE: Finchum Vs. Nacogdoches 9:21-CV-285; John Fleming Deposition- Proposed dates

Mr. Anderson,

You are a witness in this case. You were on the phone calls with Brandon Finchum that are the basis of his case. It is entirely appropriate that you be deposed. Please let us know your availability.

From: paul@paulandersonlaw.com <paul@paulandersonlaw.com>

Sent: Tuesday, May 31, 2022 5:46 PM

To: Robin H. O'Donoghue <rho@flowersdavis.com>

Cc: 'Beverly Lynn Tillman, JD, PhD' <drillman@paulandersonlaw.com>; Robert S. Davis <rsd@flowersdavis.com>; paralegal@paulandersonlaw.com; Rachel L. Oden <rlo@flowersdavis.com>

Subject: RE: Finchum Vs. Nacogdoches 9:21-CV-285; John Fleming Deposition- Proposed dates

Ms. O'Donoghue & Mr. Davis.

I object to taking my deposition and I am not available.

I am confident in 5th Circuit case law "disfavoring" and even "forbidding" depositions of opposing counsel.

Anything you can reasonably ask me would be privileged.

Without reservations,

Paul Anderson
Paul Anderson, PLLC
601 North Street
Nacogdoches, Texas 75961
paul@paulanderson.law
936.305.5600

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From: Robin H. O'Donoghue <rho@flowersdavis.com>

Sent: Tuesday, May 31, 2022 9:16 AM

To: 'paul@paulandersonlaw.com' <paul@paulandersonlaw.com>; Rachel L. Oden <rlo@flowersdavis.com>; paralegal@paulandersonlaw.com
Cc: 'Beverly Lynn Tillman, JD, PhD' <drtillman@paulandersonlaw.com>; Robert S. Davis <rsd@flowersdavis.com>
Subject: RE: Finchum Vs. Nacogdoches 9:21-CV-285; John Fleming Deposition- Proposed dates

As Rachel stated in her email, we are checking with John Fleming on his availability, and I expect we will hear something soon. As for your deposition, we requested dates for your deposition on May 9th and May 24th, and we have not heard back from you. Are you available for your deposition on one of the below dates? We asked for your deposition first, and we prefer to take your deposition first.

I will advise when John Fleming is available as soon as I know.

Thanks,
Robin

From: paul@paulandersonlaw.com <paul@paulandersonlaw.com>
Sent: Sunday, May 29, 2022 9:52 AM
To: Rachel L. Oden <rlo@flowersdavis.com>; paralegal@paulandersonlaw.com
Cc: 'Beverly Lynn Tillman, JD, PhD' <drtillman@paulandersonlaw.com>; Robin H. O'Donoghue <rho@flowersdavis.com>; Robert S. Davis <rsd@flowersdavis.com>
Subject: RE: Finchum Vs. Nacogdoches 9:21-CV-285; John Fleming Deposition- Proposed dates

Ms. O'Donoghue,

Is Mr. Fleming avliable for deposition on ("June 21, 22, 23, or the 24") these dates or not?

The availability of Mr. Fleming on these dates is neither contingent nor dependent on my availability on those dates.

When is Mr. Fleming available for deposition?

We look forward to hearing from you.

Paul Anderson
Paul Anderson, PLLC
601 North Street
Nacogdoches, Texas 75961
paul@paulanderson.law
936.305.5600

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From: Rachel L. Oden <rlo@flowersdavis.com>
Sent: Friday, May 27, 2022 1:37 PM
To: 'paralegal@paulandersonlaw.com' <paralegal@paulandersonlaw.com>
Cc: paul@paulandersonlaw.com; 'Beverly Lynn Tillman, JD, PhD' <drtilman@paulandersonlaw.com>; Robin H. O'Donoghue <rho@flowersdavis.com>
Subject: RE: Finchum Vs. Nacogdoches 9:21-CV-285; John Fleming Deposition- Proposed dates
Importance: High

Hi Sabrina,

We are checking with Mr. Fleming about the below dates. We would like to take Mr. Anderson's deposition prior to Mr. Anderson deposing Mr. Fleming. Would Mr. Anderson be available on the below dates for deposition? Please advise. Thank you!

Sincerely,

Rachel Oden

Legal Assistant to Robin O'Donoghue
and John "Jack" R. Fulgham
Flowers Davis, P.L.L.C.
1021 ESE Loop 323, Suite 200
Tyler, Texas 75701
(903) 534-8063
(903) 534-1650 (fax)
rlo@flowersdavis.com

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From: paralegal@paulandersonlaw.com <paralegal@paulandersonlaw.com>
Sent: Thursday, May 26, 2022 10:47 AM
To: Rachel L. Oden <rlo@flowersdavis.com>

Cc: paul@paulandersonlaw.com; 'Beverly Lynn Tillman, JD, PhD' <drillman@paulandersonlaw.com>; Robin H. O'Donoghue <rho@flowersdavis.com>

Subject: RE: Finchum Vs. Nacogdoches 9:21-CV-285; John Fleming Deposition- Proposed dates

Ms. Oden,

Mr. Anderson would like to know if Nacogdoches County Attorney John Fleming would be available for deposition on the following proposed dates; June 21, 22, 23, or the 24. Please Let our office know is any of these days will work for Mr. Fleming and opposing counsel.

Respectfully,

Sabrina Hudson
Paralegal / Office Manager
Paul Anderson, PLLC
601 North St.
Nacogdoches, Tx 75961
Office: 936.305.5600
Fax: 936.236.6242
Email: paralegal@paulandersonlaw.com



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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

BRANDON FINCHUM,
Plaintiff,

V.

NACOGDOCHES COUNTY,
Defendant.

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§

CIVIL ACTION NO. 9:21-CV-285

JURY DEMANDED

**ORDER GRANTING DEFENDANT'S MOTION TO COMPEL
DEPOSITION OF PAUL ANDERSON**

On this day came on to be heard Defendant Nacogdoches County's Motion to Compel Deposition of Paul Anderson, and the Court, after reviewing the motion, as well as any response thereto, finds that it should be, and is, **GRANTED**.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant Nacogdoches County's Motion to Compel Deposition of Paul Anderson is **GRANTED**.