

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT – LAW DIVISION

DENA LEWIS-BYSTRZYCKI,

Plaintiff,

v.

CITY OF COUNTRY CLUB HILLS, a  
municipal corporation, and CARL PYCZ,  
JOSEPH ELLINGTON, and ROGER  
AGPAWA, in their individual capacity,

Defendants.

No. 2012 L 009916

Honorable Brigid Mary McGrath

**NOTICE OF MOTION**

TO: Daniel Boddicker  
Keefe, Campbell, Biery & Associates, LLC  
118 North Clinton, Suite 300  
Chicago, IL 60661

PLEASE TAKE NOTICE that on **Monday, January 23, 2017 at 9:45 a.m. (a previously scheduled hearing)**, or as soon thereafter as counsel may be heard, we shall appear before the Honorable Judge Brigid Mary McGrath, or any Judge sitting in her stead, in Room 1907 of the Richard J. Daley Center, 50 W. Washington St., Chicago, Illinois, and present the attached **PLAINTIFF'S MOTION FOR SANCTIONS FOR VIOLATIONS OF THE COURT'S ORDER REGARDING INSPECTION OF COMPUTERS FOR PORNOGRAPHIC MATERIAL**, a copy of which is attached hereto and hereby served upon you.

*s/ Dana L. Kurtz*

---

KURTZ LAW OFFICES, LTD.  
32 Blaine Street  
Hinsdale, Illinois 60521  
Phone: 630.323.9444  
Facsimile: 630.604.9444  
Firm No. 43132

## PROOF OF SERVICE

The undersigned, an attorney, on oath states that I served this notice by electronic filing to the parties shown below on January 20, 2017.

Daniel Boddicker

Email: [dboddicker@keefe-law.com](mailto:dboddicker@keefe-law.com)

*s/Dana L. Kurtz*

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Dana L. Kurtz

Under penalties as provided by law pursuant to ILL. REV. STAT., CHAP. 100, Sec. 1-109, I certify that the statements set forth herein are true and correct.

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT – LAW DIVISION

DENA LEWIS-BYSTRZYCKI,

Plaintiff,

v.

CITY OF COUNTRY CLUB HILLS, CARL  
PYCZ, JOSEPH ELLINGTON, and ROGER  
AGPAWA,

Defendants.

No. 2012 L 009916

Honorable Brigid Mary McGrath

**PLAINTIFF'S MOTION FOR SANCTIONS FOR  
VIOLATIONS OF THE COURT'S ORDER REGARDING  
INSPECTION OF COMPUTERS FOR PORNOGRAPHIC MATERIAL**

Plaintiff DENA LEWIS-BYSTRZYCKI, through her counsel, respectfully moves this Court to enter an order imposing discovery sanctions on the Defendant City of Country Club Hills for violations of this Court's order allowing the inspection of Defendant's computers for pornographic material. In support, Plaintiff states as follows:

1. On August 31, 2016, this Court granted Plaintiff's motion for a forensic examination of Defendant's computers relating to employees of the fire department watching pornographic material in the fire station. (Exhibit 1, 8/31/16 Order.)

2. Plaintiff has sent four formal notices of inspections for the computers at issue as well as numerous emails to try to confirm a date for the inspection.

3. Most recently, Plaintiff's counsel sent Defendants' counsel Plaintiff's Fourth Amended Notice of Inspection for January 16, 2017. Plaintiff's counsel also sent Defendants' counsel several emails to try to confirm the date of the inspection and that

the eDiscovery expert was confirmed for the inspection/forensic imaging on January 16, 2017.

4. Defendants and Defendants' counsel has continued to evade the court's order granting the forensic imaging, including most recently cancelling the inspection the same morning and only after the eDiscovery expert appeared at the fire station. In fact, the eDiscovery expert, Andrew Garrett was told to proceed by the staff on site prior to Defendant Chief Agpawa's and Defendants' counsel's subsequent cancellation of the inspection. (*See Exhibit 2, Email Correspondence.*)

5. This Court may impose on the offending party and/or their attorney "an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred as a result of the misconduct, including a reasonable attorney fee" Ill. S. Ct. R. 219(c) (eff. July 1, 2002). Rule 219(c) states in relevant part:

**c) Failure to Comply with Order or Rules.** If a party, or any person at the instance of or in collusion with a party, unreasonably fails to comply with any provision of part E of article II of the rules of this court (Discovery, Requests for Admission, and Pretrial Procedure) or fails to comply with any order entered under these rules, the court, on motion, may enter, in addition to remedies elsewhere specifically provided, such orders as are just, including, among others, the following:

- (i) That further proceedings be stayed until the order or rule is complied with;
- (ii) That the offending party be debarred from filing any other pleading relating to any issue to which the refusal or failure relates;

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(iii) That the offending party be debarred from maintaining any particular claim, counterclaim, third-party complaint, or defense relating to that issue;

(iv) That a witness be barred from testifying concerning that issue;

(v) That, as to claims or defenses asserted in any pleading to which that issue is material, a judgment by default be entered against the offending party or that the offending party's action be dismissed with or without prejudice;

(vi) That any portion of the offending party's pleadings relating to that issue be stricken and, if thereby made appropriate, judgment be entered as to that issue; or

(vii) That in cases where a money judgment is entered against a party subject to sanctions under this subparagraph, order the offending party to pay interest at the rate provided by law for judgments for any period of pretrial delay attributable to the offending party's conduct.

In lieu of or in addition to the foregoing, the court, upon motion or upon its own initiative, may impose upon the offending party or his or her attorney, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred as a result of the misconduct, including a reasonable attorney fee, and when the misconduct is wilful, a monetary penalty. When appropriate, the court may, by contempt proceedings, compel obedience by any party or person to any subpoena issued or order entered under these rules. Notwithstanding the entry of a judgment or an order of dismissal, whether voluntary or involuntary, the trial court shall retain jurisdiction to enforce, on its own motion or on the motion of any party, any order imposing monetary sanctions, including such orders as may be entered on motions which were pending hereunder prior to the filing of a notice or motion seeking a judgment or order of dismissal.

Where a sanction is imposed under this paragraph (c), the judge shall set forth with specificity the reasons and basis of any sanction so imposed either in the judgment order itself or in a separate written order.

Ill. S. Ct. R. 219(c).

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6. As a sanction under Rule 219(c) for failing to comply with the Court's orders, this Court should grant Plaintiff among the following relief:

- a. An adverse inference against Defendants on the issue of male employees watching pornographic material in the fire station;
- b. An order requiring the inspection/forensic imaging to take place on January 26, 2017 and January 27, 2017, if necessary; and
- c. An order requiring Defendants to reimburse Plaintiff for her attorneys' fees and costs, and the cost of her eDiscovery expert having to appear and travel time to/from the fire station as a result of Defendants' last minute cancellation of the inspection.

7. This is Plaintiff's fourth motion to compel and at least third motion for sanctions because of Defendants' and their counsel's continued refusal and failure to comply with the courts orders in this case.

WHEREFORE, for the above stated reasons, Plaintiff asks this Court to enter an order imposing discovery sanctions on the Defendant City of Country Club Hills for violations of this Court's order allowing the inspection of Defendant's computers for pornographic material, and for such other relief that is just and equitable.

Respectfully Submitted,

DENA LEWIS-BYSTRZYCKI

*/s/Dana L. Kurtz*

---

Attorney for Plaintiff

KURTZ LAW OFFICES, LTD.  
32 Blaine Street  
Hinsdale, Illinois 60521  
Phone: 630.323.9444  
Facsimile: 630.604.9444  
Firm No. 43132

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## PROOF OF SERVICE

The undersigned, an attorney, on oath states that I served this notice by electronic filing to the parties shown below on January 20, 2017.

Daniel Boddicker

Email: [dboddicker@keefe-law.com](mailto:dboddicker@keefe-law.com)

*/s/Dana L. Kurtz*

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Dana L. Kurtz

[ X ] Under penalties as provided by law pursuant to ILL. REV. STAT., CHAP. 100, Sec. 1-109, I certify that the statements set forth herein are true and correct.

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# EXHIBIT 1

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Serajewski, Bystrezycki

v.

Chgo  
Cortez Club Hills, et al

No. 2012 L 9916

ORDER

This matter coming before the court on several motions:  
It is hereby ordered:

- (1) Plaintiff's Second Motion to Compel as to the forensic imaging of certain computers is granted as stated on the record (see transcript);
- (2) Plaintiff's Motion to Strike Defs' economic expert is denied;
- (3) Plaintiff's 3rd Motion for Sanctions is denied without prejudice for the reasons stated on the record;
- (4) Plaintiff to provide Defs with protocols for ESI/forensic imaging of laptops and computer ESI documents;

Atty. No.: 43132

Name: Kurtz Law Offices

Atty. for: Plaintiff

Address: 32 Bank St

City/State/Zip: Hinsdale IL 60521

Telephone: 630.323.9444

(5) Status set for September 26, 2016 @ 9:45am

ENTERED:

Dated:

ENTERED

JUDGE BRIGID MARY McGRATH-1800

AUG 31 2016

Judge

Brigid M. McGrath

Judge's No. CLERK OF THE CIRCUIT COURT OF COOK COUNTY, IL 1800

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# EXHIBIT 2

**Karen L. Moreno**

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**From:** Dana Kurtz  
**Sent:** Tuesday, January 17, 2017 11:52 AM  
**To:** Daniel Boddicker  
**Cc:** Karen L. Moreno; Heidi Sleper; Elena Vieyra (evieyra@keefe-law.com)  
**Subject:** FW: Inspection

**Importance:** High

Dan,

I did not hear back from you yesterday. Please let me know today if the inspection can proceed tomorrow, Thursday, or Friday. If so, then I will not file a motion for sanctions requesting my fees and costs. If I don't get confirmation that the inspection can proceed this week, then I will see my fees and costs and contempt order from the court.

*Dana*

Dana L. Kurtz, Esq.



**KURTZ LAW OFFICES, LTD**

[www.kurtzlaw.us](http://www.kurtzlaw.us)

32 Blaine Street, Hinsdale, Illinois 60521

Office: 630.323.9444

Facsimile: 630.604.9444

E-mail: [dkurtz@kurtzlaw.us](mailto:dkurtz@kurtzlaw.us)



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**From:** Dana Kurtz  
**Sent:** Monday, January 16, 2017 10:24 AM  
**To:** Andrew Garrett

Cc: Daniel Boddicker; Valerie Espinili; Karen L. Moreno

Subject: Re: Inspection

Dan, I understand that you just talked to Karen and that you are going to try to get your IT person over there, and that you did not understand this was just on the porn issue.

Sent from my iPhone.

Dana L. Kurtz, Esq.  
Kurtz Law Offices, Ltd.  
32 Blaine Street  
Hinsdale, Illinois 60521  
Office: 630.323.9444  
Facsimile: 630.604.9444  
E-mail: [dkurtz@kurtzlaw.us](mailto:dkurtz@kurtzlaw.us)

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On Jan 16, 2017, at 11:19 AM, Andrew Garrett <[agarrett@garrettdiscovery.com](mailto:agarrett@garrettdiscovery.com)> wrote:

I probably should not be copied on these emails.

I was told to proceed by the staff on site prior to discussions with the chief and counsel.

I offered to preserve the data on site by creating a forensic image of the hard drives using a NIST certified write blocker / hard drive imager (Logicube Forensic Falcon). I offered to leave the forensic copies on site with staff so that I take no data and do not examine any data.

This proposal was not accepted by counsel for the defendant.

I explained that if something were to happen to the data between now and the time I was approved by the parties to come back on site that the forensic copies could be used and this would avoid any claims of spoliation from this date forward.

This proposal was also denied.

Respectfully,

Andy Garrett  
eDiscovery / Computer Forensic Expert  
Garrett Discovery Inc.  
P. 312.818.4788  
M. 217.280.7782

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**From:** Daniel Boddicker <[DBoddicker@keefe-law.com](mailto:DBoddicker@keefe-law.com)>  
**Sent:** Jan 16, 2017 10:12 AM  
**To:** 'Dana Kurtz'  
**Cc:** Andrew Garrett; Valerie Espinili; Karen L. Moreno  
**Subject:** RE: Inspection

Absolutely not true. I just talked with Mr. Garrett. No Fire Department personnel instructed him to go ahead, nor do those there have authority to so instruct him. I specifically told him it was not happening.

Dana we have not agreed on even the search terms. There is much to do before it can be allowed. Happy to discuss search terms with you. Those you proposed are too broad and unacceptable.

Daniel J. Boddicker  
Attorney - Bio  
Keefe, Campbell, Biery & Associates, LLC  
118 N. Clinton Street, Ste. 300  
Chicago, IL 60661  
[dboddicker@keefe-law.com](mailto:dboddicker@keefe-law.com)  
T 312-756-1800  
F 312-756-1901  
D 312-756-3721  
C 312-371-4128

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-----Original Message-----

From: Dana Kurtz [<mailto:DKurtz@kurtzlaw.us>]  
Sent: Monday, January 16, 2017 10:08 AM  
To: Daniel Boddicker  
Cc: Andrew Garrett; Valerie Espinili; Karen L. Moreno  
Subject: Re: Inspection

Mr. Garrett was also advised by fire department personnel to "go ahead" with he inspection.

Sent from my iPhone.

Dana L. Kurtz, Esq.  
Kurtz Law Offices, Ltd.  
32 Blaine Street  
Hinsdale, Illinois 60521  
Office: 630.323.9444  
Facsimile: 630.604.9444  
E-mail: [dkurtz@kurtzlaw.us](mailto:dkurtz@kurtzlaw.us)

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> On Jan 16, 2017, at 11:03 AM, Dana Kurtz <[DKurtz@kurtzlaw.us](mailto:DKurtz@kurtzlaw.us)> wrote:

>

> Dan, the eDiscovery expert, Andrew Garrett, copied on this email, is the only person appearing today. No need for

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you or I to be there. The inspection should proceed as noticed. If it does not and you continue to refuse to allow it to proceed despite the court order, I will file a motion for contempt and seek fees and costs and sanctions.

>

> Mr. Garrett traveled 2.5 hours and is at the station right now.

>

> Sent from my iPhone.

>

> Dana L. Kurtz, Esq.

> Kurtz Law Offices, Ltd.

> 32 Blaine Street

> Hinsdale, Illinois 60521

> Office: 630.323.9444

> Facsimile: 630.604.9444

> E-mail: [dkurtz@kurtzlaw.us](mailto:dkurtz@kurtzlaw.us)

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