



Therefore, Mr. Desmond was eligible for and applied to participate in Florida's drug court program and be removed from Florida's criminal court docket. (Mooty Depo., p. 9; M. Desmond Depo., Ex. 5).

Mr. Desmond's application was accepted and he entered the program pursuant to a contract in November of 2006. (Responses of Plaintiffs to Requests for Production of Documents, relevant pages of which are attached hereto as Exhibit "C", p. Desmond00124). Mr. Desmond's primary addiction was to alcohol and he was drinking a pint of vodka maybe every other day or more, but he also abused a variety of other substances. (M. Desmond Depo., p. 77; Plaintiffs' Requests for Production Responses, p. Desmond00070). Despite the additional tools provided to him by the drug court, he was unable to stop abusing these substances. Two months into the program, in January of 2007, he tested positive for opiate use. (Plaintiffs' Requests for Production Responses, p. Desmond00112). In May of 2007, he used Benzodiazepine. (Plaintiffs' Requests for Production Responses, p. Desmond00127). In September of 2007, he was arrested for driving under the influence. (Plaintiffs' Requests for Production Responses, p. Desmond00037; Mooty Depo., pp. 12-13).

After this arrest, the drug court imposed additional conditions on Mr. Desmond. (Mooty Depo., p. 13). He was told about "Bridges of America", a Florida Department of Corrections program, but Mr. Desmond's parents asked Lisa Mooty, the Drug Court Manager, if he could participate in the Narconon program in Georgia instead. (Mooty Depo., pp. 7, 15-17). Mr. Desmond's father had found Narconon of Georgia ("NNGa") on the internet. (M. Desmond Depo., p. 70). Ms. Mooty called NNGa to ask questions so that she could decide whether it was an appropriate program for Mr. Desmond. (Mooty Depo., pp. 17-18). Ms. Mooty did not send to NNGa a copy of the drug court's contract with Mr. Desmond, nor did she explain to NNGa

what she specifically expected of it. (Mooty Depo., p. 32). She asked for and received from Mary Rieser, director of NNGa, a copy of NNGa's license. (Mooty Depo., p. 18, Ex. 2, p. 2). That license indicated that NNGa was approved and licensed to provide the, "Narconon New Life Ambulatory Detoxification Program Branch" in Atlanta. (Mooty Depo., Ex. 2). An Ambulatory Detoxification Program, under Georgia Department of Human Resources rules, is "a program for the medical management and other support for processes associated with the physical process of withdrawal from drugs in a non-residential setting." Ga. Comp. R. Regs. R 390-4-2.03 (1997)(emphasis supplied). With this information, Ms. Mooty recommended that Mr. Desmond's request to enroll at NNGa be approved and it was. (Mooty Depo., p. 36). Of course, the responsibility of complying with the drug court contract and court orders remained with Mr. Desmond and did not shift to NNGa. (Mooty Depo., p. 32.)

In accord with the terms of the contract, Mrs. Desmond drove Mr. Desmond to Atlanta in late September of 2007. (M. Desmond Depo., p. 77). They went to NNGa and Ms. Rieser escorted Mrs. Desmond through the classrooms. (M. Desmond Depo., p. 74). Mrs. Desmond then asked about living facilities and Don Delgado took her by car to where Mr. Desmond would be living. (M. Desmond Depo., p. 75). The facility was a regular apartment complex not at the NNGa offices. (M. Desmond Depo., p. 114). There were no security fences, no locks at the entrances, no bars on the windows, and no security guards. (M. Desmond Depo., p. 74). With full knowledge, then, of the NNGa facility and what it did and did not offer and full knowledge of the living quarters for Mr. Desmond, Mrs. Desmond left Mr. Desmond at NNGa.

Mr. Desmond thought that "coming to Narconon was the best choice I ever could have made....When I came to Narconon I was broken down...I decided to grab a positive attitude an [sic] attack the program....I kept at it, and just like everyone else I made it through." (M.

Desmond Depo., Ex. 23). Mr. Desmond graduated from the program and stayed in Atlanta for six months. (M. Desmond Depo., p. 81).

Mrs. Desmond picked Mr. Desmond up in March and took him back to her home in Florida. (M. Desmond Depo., pp. 82-83). Mr. Desmond appeared before the Florida judge and told him what the NNGa program was like. (Mooty Depo., p. 34). He then continued on the Florida drug court plan. (Mooty Depo., pp. 61). Within a few weeks of being home, however, Mr. Desmond admitted to using alcohol. (M. Desmond Depo., p. 60). He continued to test positive for substance abuse, so his prognosis was poor. (Plaintiffs' Requests for Production Responses, p. Desmond00124). Mr. Desmond then asked to return to NNGa.

The drug court agreed to allow him to return to NNGa without having any conversations with NNGa and without advising NNGa of any of the restrictions imposed by the drug court on Mr. Desmond. (Mooty Depo., p. 26). The Desmonds knew at this time that NNGa offered a day program only. (M. Desmond Depo., p. 138). They also knew that, while the apartment complex at which Mr. Desmond chose to live had monitors to help supervise the students, there was no mechanism to prevent students from leaving freely and other people (residents and non-residents alike) from entering the apartment complex. (M. Desmond Depo., pp. 75, 107-108).

Mr. Desmond had been back in Atlanta attending NNGa in the day and going to his apartment at night for approximately two weeks when he spent an evening drinking heavily. Mr. Desmond then left his apartment, found and ingested some heroin. (M. Desmond Depo., pp. 91, 122). This volatile combination of ethanol and opiates proved fatal to Mr. Desmond. (M. Desmond Depo., pp. 91-92).

After the death of Mr. Desmond, Plaintiffs brought this lawsuit, contending that NNGa somehow should have done what the criminal justice system in Florida, the Florida drug court,

various substance abuse groups, Plaintiffs and, most importantly, Mr. Desmond himself could not do: prevent Mr. Desmond from abusing drugs and alcohol. (Complaint). The claims were without legal or factual support when the Complaint was filed and Plaintiffs have been unable to create or excavate any such support during the discovery process. Rather than gracefully concede that, Plaintiffs filed the instant Motion, which is likewise devoid of legal or factual support. In the Motion, Plaintiffs make broad and serious accusations which they then fail to prove with record evidence or Georgia law. This court should not allow Plaintiffs' inflammatory rhetoric to beguile it into imposing unwarranted sanctions. Instead, it should carefully review the deposition at issue, the objections raised, and the conduct of counsel. This process will lead the court ineluctably to conclude that no sanctions against NNGa's counsel are justified.

#### **Argument and Citation of Authority**

It should be noted at the outset that in the four months since Mary Rieser's deposition, Plaintiffs' counsel has never contacted NNGa's counsel to discuss the allegedly improper deposition conduct nor any resolution of the issues allegedly resulting from it. In an attempt to rectify this, NNGa's counsel wrote to Jeffrey R. Harris, Darren W. Penn, and Laura Spires, the lawyers who signed the Motion for Sanctions, but, interestingly, not the lawyer who attended the deposition at issue. (See letter of June 13, 2011 from Kathryn S. Whitlock to Jeffrey R. Harris, Darren W. Penn, and Laura Spires, a true and accurate copy of which is attached hereto as Exhibit "D"). Plaintiffs' counsel never responded to this overture. For this reason, alone, the Motion should be denied. Uniform State Court Rule 6.4. Even if Plaintiffs' had followed the local rules, the Motion would be subject to denial since substantively it is without merit.

“Counsel should keep in mind during the conduct of a deposition...that the examination and cross-examination of witnesses during depositions should generally proceed as it does at trial.” Collins v. International Dairy Queen, Inc., 1998 WL293314,\*2 (M.D. Ga. 1998).

“The law has regard to the rights of witnesses as well as those of the parties litigant. Witnesses have a right ‘to be examined only as to relevant matter and to be protected from improper questions and from harsh or insulting demeanor’ by counsel.”

Butler v. State, 285 Ga. 518, 520, 627 S.E. 2d 92 (2009), *quoting*, Smith v. State, 235 Ga. 327, 328, 219 S.E. 2d 440 (1975); O.C.G.A. §24-9-62. Furthermore, witnesses are neither required nor allowed to provide testimony that is speculation or beyond their personal knowledge nor to testify about the contents of a document when the document itself is available to review. Pollard v. The State, 238 Ga. App. 253, 518 S.E. 2d 463 (1999); Building Associates, Inc. v. J. W. Crider, 141 Ga. App. 825, 828, 234 S.E. 2d 666 (1977); Curry v. The State, 97 Ga. App. 702, 104 S.E. 2d 148 (1958); The Central Railroad v. Senn, 73 Ga. 705, 1884 WL 2454 (1884).

These rules are not suspended during depositions so that counsel can run roughshod over a witness since a judge is not present. Instead, it is the job of the lawyers, both questioning and defending, to ensure that the witness understands her rights and is questioned in accord with those rights and Georgia law. Preamble, State Bar Rules & Regs., ¶¶ 2, 4; State Bar Rule 3.4(g), Troutman v. Southern Ry. Co., 441 F.2d 586 (5<sup>th</sup> Cir. 1971). It is further the duty of counsel to shut down the questioning if it become abusive. Butler, *supra*.

In recognition that one way lawyers can abuse a witness when they are outside the presence of a judge is to conduct seemingly endless depositions, the State Court rules limit a deposition to, “one day of seven hours”. Uniform State Court Rule 5.3. The rule does not specify whether the seven hours is seven hours of testimony or seven hours from start to finish, but a reasonable interpretation is an eight hour work day with an hour break for lunch.

It is these rules of professional conduct and civil procedure which NNGa's counsel protected during the deposition of Mary Rieser. If one reviews the numerous pages of the deposition cited by Plaintiffs, precious little of which is quoted for the court, it becomes clear that, because Plaintiffs counsel continually asked questions which exceeded the permissible scope of discovery and witness examination, NNGa's attorney was required to, and properly did, object to the questions. On a very few occasions, NNGa's counsel was compelled to instruct the witness not to answer to ensure that no privilege was waived or federal privacy law concerning patients in rehabilitation facilities violated. Finally, after a long day of often unprofessional examination, NNGa's counsel was constrained to end the deposition as it exceeded the time allowed by law and the bounds of propriety when Plaintiffs' counsel distorted the witness' testimony and made unsubstantiated accusations. NNGa's attorney's conduct thus was necessary and appropriate under Georgia law and rules.

The deposition of Mary Rieser began at 10:08 a.m. and was concluded at 6:28 p.m. (Deposition of Mary Rieser, relevant pages of which are attached hereto as Exhibit "E", pp. 7, 295)<sup>2</sup>. There was a one hour and six minute lunch break and a break approximately every 90 minutes for between three minutes and 15 minutes. (Rieser Depo., pp. 67, 68, 130, 189, 213, 258). It ended approximately 20 minutes after NNGa's counsel stated that she would "like to remind counsel that under the local rules depositions are limited to one day of seven hours, and we have been here for a little over eight hours now." (Rieser Depo., p. 281). During that deposition, the following exchanges occurred:

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<sup>2</sup> The deposition was recorded stenographically and by video. NNGa has asked Plaintiffs to file the original typed transcript. If the Court would like a copy of the video deposition so it can hear the tone and tenor of the proceedings, it need only let NNGa know and NNGa will provide a copy to the court.

MS. WHITLOCK: Object to the form of the question insofar as it's been asked and answered. But if you can answer it again, go ahead.

(Rieser Depo., p. 32).

MS. WHITLOCK: Object to the form of the question insofar as the document says what it says. But if you can answer the question any more, you can.

(Rieser Depo., p. 53).

Q. Did Narconon have an attorney that worked – was this your personal attorney, or was this attorney working on behalf of Narconon?

A. Well, I – I hired him; he worked on behalf of Narconon.

Q. Okay. What's his name?

...

A. Rich Sanders with Balch & Bingham.

Q. Okay. So – and I'm not asking you about anything you discussed with Mr. Sanders, but your understanding of the reason you needed this agreement was because of some negotiations with DHR?

A. Yeah; he was working with me and DHR.

Q. Okay. Who hired Mr. Sanders?

A. I did.

Q. Okay. And who paid his hourly rate?

MS. WHITLOCK: I'm going to object to the form of this question and – and ask that you explain why you need to get into any relationship she had with an attorney. I don't see that it has any relevance, and I question whether you're getting into some protected areas.

MS. FRANKLIN: Okay. I –

BY MS. FRANKLIN:

Q. Can you answer the question?

MS. WHITLOCK: No, I'd – I'd like – I'm going to instruct her not to answer unless we can get –

MS. FRANKLIN: Okay. You're –

MS. WHITLOCK: – a clear understanding here.

MS. FRANKLIN: You're going to instruct her not to answer the question of who paid Mr. Sanders' hourly rate?

MS. WHITLOCK: That – yes. At this point I don't see that it has any relevance, and I question why you're getting into her relationship with another lawyer.

MS. FRANKLIN: Okay. It's – I'm trying to establish whether it's her relationship or whether it's Narconon's relationship 'cause if Narconon was having negotiations with the – with DHR, that's relevant to this case and I want to know who was brokering, you know, the deals that ended up being made.

MS. WHITLOCK: And she just answered that question; she told you that he was working for Narconon of Georgia.

BY MS. FRANKLIN:

Q. Okay. So it's your testimony that Mr. Sanders was paid by Narconon of Georgia?

MS. WHITLOCK: Object to the form of the question. That wasn't the testimony, and I stated an objection to that question. She testified that Mr. Sanders was retained on behalf of Narconon of Georgia.

MS. FRANKLIN: Okay.

BY MS. FRANKLIN:

Q. Did Narconon of Georgia pay Mr. Sanders?

MS. WHITLOCK: Same objection.

MS. FRANKLIN: Okay. You're – you instruct her not to answer –

MS. WHITLOCK: I am.

MS. FRANKLIN: -- that question? Okay. We'll enumerate these in case we have to get the court.

BY MS. FRANKLIN:

Q. What was – do you remember who drew this contract up?

A. I don't remember who drew it up. I knew he approved it, he presented it.

Q. To you?

A. No.

Q. Who did he present it to?

A. I believe it was part of a presentation. I believe, 'cause I'd have to see the whole thing; there was many, many papers during that time. Many papers. But I believe that this was part of – one of these, not the first one, of – of what he presented to DHR.

Q. When was the first time you saw this service agreement?

MS. WHITLOCK: Object to the form of the question. I presume you mean as it was presented to Dr. Robbins, and not –

MS. FRANKLIN: I want –

MS. WHITLOCK: -- as it was presented to her by her lawyer.

MS. FRANKLIN: I want to know the first time she saw the service agreement.

MS. WHITLOCK: And I am going to object to the question insofar as it calls for communications that she may have had with Mr. Sanders. You can answer the question as to when you saw an agreement that was presented to Dr. Robbins, but I don't want you to get into anything that you've discussed with Mr. Sanders. Or any communications that you had with him.

BY MS. FRANKLIN:

Q. Are you refusing to answer the question? Based on advice of counsel?

A. Can – I don't know if I'm getting advice of counsel, but the answer is I don't exactly remember.

Q. You don't remember when you saw this?

A. Not the exact time.”

(Rieser Depo., pp. 78-82).

Q. Now, on – if you'll look back one page, on Bates number 0074, this is under the section that says “Physician agrees to,” and number 7 says, “Provide instruction to facility staff on appropriate admissions to ASAM level 1 program and how to refer those patients requiring higher ASAM level treatment.” Did Dr. Robbins do this?

A. Yes....

...

I remember having a discussion, I don't know if it was on this day, about what appropriate admissions would be, who would be qualified...

Q. Did Dr. Robbins provide instruction to you or anyone at Narconon on appropriate admissions to ASAM level 1?

A. Yes...

Q. All right. Did Dr. Robbins at any other time provide instruction to the Narconon staff on the appropriate admission to ASAM level 1?

MR. AMASON: Objection.

BY MS. FRANKLIN:

Q. You can answer.

A. As it would be applicable, on an individual basis.

Q. Ms. Rieser, I'm asking you whether Dr. Robbins on any other occasion provided instruction to the facility staff on the appropriate admission of A-to ASAM level 1?

MR. AMASON: Objection.

MS. WHITLOCK: Object to the form of the question; you're arguing with the witness: She just answered your question."

(Rieser Depo., pp. 93-99).

Q. All right. So you went to Dr. Robbins' office again in February of 2007 and you brought her this agreement, right?

A. Yes.

Q. And it's -- it's different than the agreement titled "Healthcare Provider Service Agreement" in several ways; would you agree with me?

MS. WHITLOCK: Object to the form of the question; --

THE WITNESS: Do you -- yeah --

MS. WHITLOCK: -- the document's a written document, it speaks for itself. If you've got a specific difference you'd like to ask her about, I think that's fair, but I think it's improper to ask this witness a general question like that.

MR. AMASON: Join the objections.

BY MS. FRANKLIN:

Q. Can you answer the question?

A. I'd like to know specifics, 'cause there's a lot of --

Q. Well, let's just take the title, "Medical Director Agreement". That's different than the title "Healthcare Provider Service Agreement," correct?

A. Yes.

Q. All right. Why was there a change in the title of the document?

A. So, as I said, we were moving towards -- under the direction of the guidance subsequent to these conversations that my attorney was having with the state, what she was doing at the time actually fell more under -- like, fell under that title. What she -- it didn't change what she was doing. It just clarified.

Q. Do you know why there was a change in the title? If you don't, that's fine.

A. Yes.

Q. Okay. Why?

MS. WHITLOCK: Object to the form of --

BY MS. FRANKLIN:

Q. Without --

MS. WHITLOCK: -- the question;

BY MS. FRANKLIN:

Q. without --

MS. WHITLOCK: -it's been asked and answered.

BY MS. FRANKLIN: Q. Without going into --

A. It was the --

Q. -what your attorney --

A. – answer I just said.

Q. Okay. Which was what?

A. As we were moving towards – there's just titles. A different name of what she was already doing.”

(Rieser Depo., pp. 102-105).

Q. Okay. Did you tell Dr. Robbins that you were required by the state to have a medical director? –

A. I don't know –

Q. – In order to expand your services.

A. I don't know if that was the exact words. It's – the idea behind it is the functions she was doing. Were already – fell with under what– be--you know, and so the definition of it was medical director for this new license.

Q. Okay. Did you specifically tell her that the state required her to have that title?

MS. WHITLOCK: Object to the form of the question; it's been asked and answered.

THE WITNESS: I don't remember the exact words I used. But as – as I said, her

BY MS. FRANKLIN:

Q. So you don't remember whether you specifically told her that the state –

A. I remember what –

Q. --required –

A. --I told you before, that her duties, and explanation of them, would have a different title under this, you know, New Life Ambulatory Detoxification Program.

Q. Right; but did you tell her that the state required that title?

A. Yes.

(Rieser Depo., pp. 106-107).

Q. Okay. Had Narconon students had access to the sauna program as outlined in your policies and procedures since the doors were opened in Atlanta in 2002?

...

MS. WHITLOCK: Object to the form of the question insofar as it assumes that the sauna procedure is outlined in the policies and procedures.

BY MS. FRANKLIN:

Q. You can answer.

A. Like, had they had access – they could – I mean...them and anybody else. I mean, it was referral basis. We – there was – we could refer them.”

(Rieser Depo., p. 110).

Q. Did Dr. Robbins ever visit the Narconon facility?

A. No.

Q. Why not?

MS. WHITLOCK: Object to the form of the question insofar as it calls for this witness to speculate about what might be in the mind of another.

BY MS. FRANKLIN:

Q. Based on what you know, –

MR. AMASON: Join the objection.

BY MS. FRANKLIN:

Q. – Do you know why Dr. Robbins never visited the facility?

MR. AMASON: Same.

THE WITNESS: Am I supposed to answer?

MS. WHITLOCK: If – if you can, yes.

THE WITNESS: Yeah, I can – I can answer. She visited the sauna facility. The sauna had been delivered at a different facility than Narconon. So she visited the sauna. That’s – was what she was approving people for, so she had visited I think two places where we had done the – so she had visited that, not the actual Narconon facility.

(Rieser Depo., pp. 114-115).

Q. Okay. Was that understanding ever documented in writing?

A. I think one time there was a schedule proposed. It wasn't like an agreement, "you all are going to do this as a schedule."

Q. When was that schedule in place?

MS. WHITLOCK: Object to the form of the question. I think that mischaracterizes the testimony. She never testified there was a schedule in place.

BY MS. FRANKLIN:

Q. Was there a schedule in place, (Pronouncing) Ms. Riser? Rieser, excuse me.

A. Well, since we've been open our schedule's been 10:00. You know, we open at 10:00, and that's--wherever anybody's coming from, they need to be at Narconon at 10:00."

(Rieser Depo., p. 137).

Q. Okay. Was he a former student of Narconon?

MS. WHITLOCK: Object to the form of the question and instruct the witness not to answer.

MS. FRANKLIN: That -- that's fair enough."

(Rieser Depo., pp. 139-140).

Plaintiffs' counsel "previously showed to other counsel, except you guys, at lunch" a set of documents which Plaintiffs counsel intended to question the witness about extensively.

(Rieser Depo., p. 141). She failed, however, to make copies of the documents for use by other counsel during her lengthy questioning. Nevertheless, the examination continued as follows:

Q. Okay. What -- then what is it that Ms. Toth -- strike that. Do you know whether Ms. Toth wrote this particular KR as a Narconon employee, or as a Delgado employee?

MS. WHITLOCK: Object to the form of the question insofar as it calls for this witness to testify about what was in the mind of another.

THE WITNESS: I don't -- I don't know. It wasn't written to me.

(Mary Rieser Depo., p. 152).

A. I can say I think Maria wrote this.

...

Q. And this is a report from what appears to be, based on your knowledge of Ms. Delgado's handwriting, a report to the ethics officer for that.

...

Do you know what that is saying? Does it make any sense to you?

MS. WHITLOCK: I'm going to object to the form of the question insofar as it calls for this witness to testify about a document that's not written to or from her.

...

A. I don't know what the circumstances were behind this. I – I don't know what the circumstances were behind this.

(Rieser Depo., pp. 158-160).

Counsel for co-defendant Delgado Development, Inc., reasonably asked if she could have a copy of the documents which apparently related to her client to refer to during the questioning.

(Rieser Depo., p. 162). Recognizing the propriety of the request, Plaintiffs' counsel responded by saying,

MS. FRANKLIN: I'd ask that we wait until there—there's not a question pending...

(Rieser Depo., p. 162). So the questioning continued.

Q. Ms. Delgado was apparently reporting about a student who blew positive for alcohol, right? Or students. Correct?

MS. WHITLOCK: Object to the form of the question insofar as it calls for this witness to testify about a document that she neither authored nor was directed to her.

BY MS. FRANKLIN:

Q. You may –

MS. EYRE: I join in the objection.

BY MS. FRANKLIN:

Q. – answer the question.

A. Well, it says that redacted name “admitted to using pot. Came to apartment with...” I mean, it says what it says.

Q. Right. And so do you know why Ms. Delgado would have given any of your students a Breathalyzer test?

A. Well, during the hours when this happened, they weren't – this – Narconon was not open.

Q. Right.

A. So I know that at Delgado they gave Breathalyzer –

Q. Okay.

A. – they Breathalyze people.

Q. Was that at your direction?

A. No.

Q. You never discussed Brea – giving Narconon students Breathalyzers with Ms. Delgado?

MS. WHITLOCK: Object to the form; that's a different question.

BY MS. FRANKLIN:

Q. You can answer.

A. I asked for results of any Breathalyzer test or drug test.”

(Rieser Depo., pp. 163-164).

Q. I'm asking you – I'm not asking you about what you did in response to this – well, I--frankly, I am. I am asking you, after this, did you continue to refer pa--students to Delgado Development? That was my question.

A. I don't want it to be linked that I assumed this was true and then I sent people to Delgado. This student was corrected. He said this. This is –

MS. WHITLOCK: Okay, but that's not her question, Mary. –

THE WITNESS: Maybe I'm not under –

MS. WHITLOCK: – listen to her question.

THE WITNESS: --Standing. Okay. Okay, I'm sorry. Ask your question.

BY MS. FRANKLIN:

Q. Did you continue to refer patients to Delgado after this date?

A. Yes.

(Rieser Depo., p. 170).

Counsel for NNGa waited until the end of questioning on the first page of the document and then tried to make a copy for all counsel while the witness got a drink of water. In response to this, Plaintiffs counsel improperly tried to restrict the witness' movements and delve directly into matters protected by the attorney-client privilege.

Q. All right. On the next page, it's Bates number 1205, it's a KR from Deborah, about midway down the page –

MS. WHITLOCK: But before you get into another one; Melanie, did you want a copy of these? You asked us to wait until you were finished with – with that one. Do you want a copy of these to be able to follow along, or do you want to wait until we're done?

MS. EYRE: No, I would like a copy to the extent that my client's involved in any; yeah, I would like a copy.

MS. WHITLOCK: I'm just going to make a set, so...

MS. FRANKLIN: Okay. And I'd ask that the witness not confer with counsel during the pending question.

MS. WHITLOCK: That's not appropriate.

THE WITNESS: Oh, no, no, I'm not going to – I was going to get some water.

MS. WHITLOCK: No, you can come on.

MS. FRANKLIN: No, I don't – I'd ask that – that you not confer with counsel during a pending question.

MS. WHITLOCK: There isn't a question pending.

MS. KOBRIN: There isn't a pending question.

MS. WHITLOCK: Mary, come on.

(Thereupon Ms. Whitlock and the witness exited the deposition room.)

THE VIDEOGRAPHER: We're going off the video record at 3 –

MS. FRANKLIN: No, let's don't go off the video record. Just so all parties know, I'm going to – I'm just contacting the court, 'cause clearly we're going to have to get a ruling on this.

MS. KOBRIN: A ruling on what?

MS. FRANKLIN: On the – the impropriety of HA – taking a witness out and conferring with the witness during deposition.

MS. EYRE: I don't think she's conferring; I think she's making copies.

MS. FRANKLIN: She needed the witness to help make copies? She directed the witness to leave the room.

MS. EYRE: I think she knows what her obligations are.

MS. KOBRIN: And there was no question pending.

MS. EYRE: Yeah, that's true too.

MS. KOBRIN: She stopped you when you were about to look at an additional document.

MS. FRANKLIN: Just...I'm not going to argue it.

(Thereupon, Ms. Whitlock entered the deposition room.)

MS. WHITLOCK: Here are these, and then this is your original. I'm going to do like school; I'm going to take one and pass them down.

...

MS. FRANKLIN: Kate, just – I told counsel as we were – as you were out there, I'm just contacting the court to go ahead and we can get up a conference call.

MS. WHITLOCK: Are they on the line?

MS. FRANKLIN: No.

MS. WHITLOCK: Oh. Okay.

MS. EYRE: Are you going to wait for that?

MS. FRANKLIN: No, I'm going to go forward.

...

MS. FRANKLIN: Do you know where your witness went?

MS. WHITLOCK: She'll be back in just a minute.

MS. FRANKLIN: Did you leave a copy of this exhibit with her?

MS. WHITLOCK: Rebecca, I'm not going to get into [sic] you what I may or may not have discussed with my client.

MS. FRANKLIN: I didn't ask what you discussed with your client – I'll ask her that –but did you leave a copy of this exhibit with her?

MS. WHITLOCK: Rebecca, it's not my deposition.

MS. FRANKLIN: It will be.

(Thereupon, the witness entered the deposition room.)

BY MS. FRANKLIN:

Q. Ms. Rieser, what did you discuss with Ms. Whitlock during the break?

MS. WHITLOCK: Object to that question and instruct the witness not to answer.

MS. FRANKLIN: Based on?

MS. WHITLOCK: Excuse me?

MS. FRANKLIN: Based on?

MS. WHITLOCK: The attorney-client privilege. I'm sure you're familiar with it.

BY MS. FRANKLIN:

Q. Ms. Rieser, did Ms. Whitlock give you a copy of this Exhibit 4 to review?

MS. WHITLOCK: Ob-object to the form of the question, instruct the witness not to answer.

MS. FRANKLIN: Okay.

BY MS. FRANKLIN:

Q. Did you review exhibit 4 while you were out in the hall?

A. I left it right here.

Q. Did you review a copy of it?

A. (Witness shakes head negatively.)

MS. KOBRIN: She needs to answer that.

MS. WHITLOCK: You need – put – say “yes” or “no”; she can’t take that down.

THE WITNESS: Oh. No.

BY MS. FRANKLIN:

Q. Did you discuss with Ms. Whitlock the – exhibit?

MS. WHITLOCK: Object to the form of the question, instruct the witness not to answer.

MS. FRANKLIN: Okay.”

(Rieser Depo., pp. 173-178).

Plaintiffs argument that this assertion of attorney-client privilege proves that any particular matter was or was not discussed by the witness and her attorney is completely without foundation in the law. (Plaintiffs’ Brief, p. 10). O.C.G.A. § 24-9-24. There simply is no authority for the proposition that raising a privilege gives rise to a presumption that a particular matter was or was not discussed.

Q. Okay. And do you tell – how do you determine which students can stay home, or you would recommend to stay home – not recommend to stay home unsupervised?

MS. WHITLOCK: Object to the form of the question; I think it’s vague and ambiguous. I’m not sure what you’re asking.

THE WITNESS: I can give an example. Towards the end of the program. That’s a – a person who’s working, who has been working, you know, that particular person might be an example it would be fine. They’ll—they’ll come – and finish

their program, they'll be fine. Other people we would prefer to be with other people. I mean, I don't know what she meant by this, but..."

(Rieser Depo., p. 181).

Q. Do you consider it an ethical violation?

MS. WHITLOCK: Object to the form insofar as it's --

THE WITNESS: Deborah --

MS. WHITLOCK: -- been asked and answered.

THE WITNESS: Deborah did.

BY MS. FRANKLIN:

Q. Do you ?

A. Ethical violation, I don't -- that infers like we've got some rules up, like "Keep your things"--

Q. Infers that you have some ethics?

MS. WHITLOCK: Object to the form and to the mocking tone of counsel.

BY MS. FRANKLIN:

Q. And I'm sorry, I cut you off.

MS. WHITLOCK: If you're going to mock the client, we'll be done. Go ahead.

(Rieser Depo., p. 184).

Q. Do you know how many apartments Delgado leased from One Sovereign Place in 2006?

A. No, I don't.

Q. Okay. Do you know approximately how many?

A. I think at any given time it could be different, a different amount.

Q. All right. Do you know --

A. I know at one time I think they might have had four.

Q. All right. And the other times they had more?

A. Yes.

Q. How many more? What's the most they ever had, to your knowledge?

A. You know, I don't -- I don't really know. I honestly don't.

Q. Okay. More than 20?

A. I don't know.

...

Q. Okay. And you -- you don't know whether there were more or less than 20 apartments leased by Delgado in 2006?

MS. WHITLOCK: Object to the form of the question; asked and answered.

THE WITNESS: Yeah, I feel like it -- I honestly don't know how many apartments.

BY MS. FRANKLIN:

Q. And I'm not asking you exactly how many apartments; I'm asking you whether you know whether there were more or less than 20?

MS. WHITLOCK: Object to the form of the question; it's been asked and answered.

THE WITNESS: I mean, I don't know.

(Rieser Depo., pp. 192-194).

Q. Do you have the list that you just referred to?

A. Not the list that I just referred to, --

Q. Okay. What's --

A. No, I don't have it.

Q. -- the document retention policy at Narconon?

MS. WHITLOCK: With respect to what?

BY MS. FRANKLIN:

Q. What's the document retention policy at Narconon?

MS. WHITLOCK: Object to the form of the question in that it's vague and ambiguous. What kind of documents are you talking about?

BY MS. FRANKLIN:

Q. Can you answer the question?

A. Seven years.

(Rieser Depo., p. 195).

Q. Did Narconon exercise any control over the students living at One Sovereign Place?

MS. WHITLOCK: Object to the form of the question, insofar as it's vague and ambiguous. Well, what do you mean by "control"?

BY MS. FRANKLIN:

Q. Go ahead.

A. I didn't control anything. I mean, each person coming in distinctly knew that where they lived, they could, that we would refer people. We told them we referred people. So I didn't – I don't feel like I controlled where they lived.

Q. Okay. Did you have any – exercise any control over Delgado Development in 2008?

MS. WHITLOCK: Same objection.

THE WITNESS: No, I – I didn't control Delgado Development.

(Rieser Depo., p. 199).

Q. All right. In 2008 did you have knowledge of drug or alcohol use at One Sovereign Place among students?

MS. EYRE: Object to the form of the question.

THE WITNESS: I had knowledge as it was reported, like this (indicating).

BY MS. FRANKLIN:

Q. Okay. Any other knowledge?

A. Just what was reported.

Q. So you don't know of any other instances, besides these that were reported in the KRs?

MR. BARTLETT: I'm going to object to the form.

...

THE WITNESS: I – you know, I can't tell you what I know. I know that these are reports from, you know, what was requested, Delgado to Narconon. You know, if a student comes in and says, "hey, I – I goofed up last night," that might be in his folder. His or her folder. It would be his at that time at One Sovereign Place. Or if a Narconon staff member found out and reported it to ethics. So, you know, this was one way that we found out, about anyone on the program, wherever they stayed.

BY MS. FRANKLIN:

Q. Right. Did you have any knowledge of any drug or alcohol use among students at One Sovereign Place in 2008 besides what's in those reports?

MS. WHITLOCK: Object to the form.

BY MS. FRANKLIN:

Q. Do you specifically remember any other instances where you were alerted of drug – or, alleged drug or alcohol use at the apartments?

MS. WHITLOCK: Object to the form of the question; it's been asked and answered. You can answer if you can.

THE WITNESS: Yes.

BY MS. FRANKLIN:

Q. Okay. Other – other incidents besides those in the reports?

A. Yes.

(Rieser Depo., pp. 200-201)

It was immediately after this exchange, over six hours into the deposition, that Plaintiffs' counsel mentioned Patrick Desmond for the first time. (Rieser Depo., p. 201).

She then moved into other matters.

Q. What's the policy for Narconon regarding random drug testing?

A. If it's indicated, or just random. The definition of "random" is random.

Q. Okay. So there's no rhyme or reason that goes with when you –

A. No, I didn't say that.

Q. All right. Well, when do you – when do you decide to randomly test for drugs? Or alcohol.

MS. WHITLOCK: Object to the form of the question; it's argumentative, it's been asked and answered.

THE WITNESS: Sometimes everyone is tested at one time. If someone is acting different, because they're different, then they will be randomly based on, you know, a judgment that person's acting different. Because – anyway, if they're indicating different signs of abuse.”

(Rieser Depo., pp. 220-221).

Q. Okay. And is this a form letter that you will send to potential students?

A. Yeah, it was a form letter. A sample of a form letter.

Q. Do you know whether you sent a similar letter to Ms. Mooty?

A. I could have.

Q. Do you know whether you did?

A. I probably – I could have, if it was two pages. I mean, I'm just guessing. But, you know –

MS. WHITLOCK: Well, you don't need to guess.

THE WITNESS: Okay. Then I don't know for sure.”

(Rieser Depo., p. 223).

Q. Is it your understanding this is a letter from Tra--Tracey – is it Stepler?

A. Yes.

...

Q. Okay. Now, in the next paragraph you say, “Narconon of Georgia was originally founded as an alternative to incarceration. We write reports to probation officers and judges as requested.” How many – in September of 2007, how many students were involved in legal proceeding or were there as an alternative to incarceration?

MS. WHITLOCK: Object to the form of the question; you stated that she said that, and we've already seen that this is not her letter."

(Rieser Depo., pp. 250-252).

Q. Do you recognize the handwriting on that document?

A. No.

...

Q. Okay. About halfway through the page it says, "Patrick sleeps better. As time passes, he does experience a little anxiety with regards to alcohol", and then says "No Worries suggested and administered." Do you know that that means?

MS. WHITLOCK: Object to the form of the question insofar as it calls for this witness to comment on a document which was not authored by or directed to her.

BY MS. FRANKLIN:

Q. You can answer.

A. I know there was a vitamin called No Worries."

(Rieser Depo., pp. 263-264).

Q. Uh huh (affirmative). I just want to know the first time you ever saw this.

A. I had to request this. I think it was -

MS. WHITLOCK: When did you see it was what she asked.

THE WITNESS: Sometime in July. No it couldn't have been. I don't know. It was afterwards. I mean, it was -

(Rieser Depo., p. 287).

Q. "Patrick was encouraged not to leave on his own, but he did." Was that the same student who told you he had been drinking? Or was that the monitor, Brad Taylor?

A. Brad's the one who told me that he told him not to leave. I don't remember who told me he had been drinking. I - I don't. It might have been -

MS. WHITLOCK: Listen -

THE WITNESS: No, I don't remember. I really don't.

(Rieser Depo., pp. 288-289).

Q. Did you – did anyone from the Department of Human Resources come out there after the incident to investigate or inquire about Patrick's death?

A. Much later.

Q. When?

A. It wasn't – it wasn't just about that. It was an inspection. That was – seems like months. A long time later.

Q. Okay. Did that person – was it a male, or a female?

A. A male.

Q. Did that person inquire about Patrick's death specifically?

A. No.

Q. Did – did he – did he know about it?

A. Someone had told him. Someone had reported it. Apparently a student had called up. They knew about it because of this, and it – it was several things that he was checking on.

Q. What? What did he ask you?

A. He asked did I have a policy and procedure about when something disastrous or dangerous situation happened.

Q. And you said yes?

A. I said I didn't have a policy but I followed procedure in the – in the state manual.

Q. Right. What else did he ask you?

A. Did we have a chain of custody intact enough to know if someone would have falsified....It was a general thing, wasn't about Patrick. This is a other [sic] topic.

Q. Falsified drug test?

A. Yes, a student. Like, you know, did – asked about our chain of custody.

Q. 'Cause there was a complaint to DHR about the staff falsifying drug tests, right?

(Rieser Depo., pp. 292-293).

The transcript thus reveals that Plaintiffs were afforded a very thorough and sifting examination of Ms. Rieser. In the spirit of cooperation and full discovery, they were granted significant leeway and allowed to inquire about a number of issues that most likely exceed the proper bounds of the Georgia Civil Practice Act. The witness was instructed not to answer only when the questions sought information which was privileged under Georgia or federal law. Moreover, except in those very few instances, the witness did answer every question, sometimes several times. Plaintiffs' counsel was given the opportunity to proceed professionally even after she had addressed the witness in a contemptuous and discourteous tone. (See, e.g., Rieser Depo., p. 111.) In fact, far from being hampered, Plaintiffs were assisted by NNGa's counsel's efforts to keep the witness focused on and listening to the questions being posed. In short, despite their vociferous protestations, Plaintiffs were given all and more than that to which they were entitled under Georgia law.

In a feeble attempt to sustain their Motion, Plaintiffs baldly assert that, "other courts repeatedly condemn conduct identical to Defense Counsel's conduct in this case". They fail to tell the court, however, how the conduct is similar. They fail in this regard no doubt because the cases do not contain comparable facts. For example, in Hall v. Clifton Precision, 150 F.R.D. 525 (E.D. Pa. 1993) and Collins, *supra*, the parties stopped taking depositions and jointly sought the court's direction, so there is no conduct in the opinions with which one can compare this case. In Thomas v. Hoffmann-LaRoche, Inc., 126 F.R.D. 522 (N.D.Miss. 1989), the offending attorney averaged, "45 objections per hour for two full days" for a total of 471 objections over two days. In contrast, even according to Plaintiffs, NNGa's attorney in this case made 28

objections over a full day of deposition. In Ngai v. Old Navy, 2009 WL 2391282 (D.N.J. 2009), the witness and the lawyer were text messaging each other all throughout the deposition. No such texting or communication occurred in this case. NNG will not further belabor the point. The cases cited by Plaintiffs do stand for the general propositions cited by Plaintiffs; they do not, however, apply to this case. There simply has not been sanctionable improper deposition conduct on the part of NNGa's attorney.

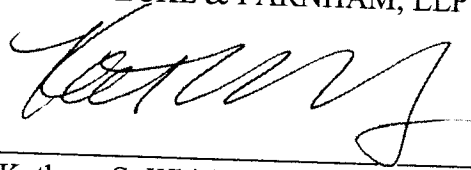
### **Conclusion**

In summary, the instant Motion is an attempt by Plaintiffs to shift the court's focus from the merits of the case apparently because, despite the length and breadth of Mary Rieser's deposition, Plaintiffs did not get the testimony they hoped they would. That result may be because Plaintiffs' counsel failed to inquire about relevant matters until almost the end of the day or because the facts are not as Plaintiffs wish them to be. It is not because Defendant's counsel violated any state bar rule or Georgia law. (Indeed, while Plaintiffs make broad brush statements that there was conduct which violated these authorities, they cite not a single rule of law nor attorney conduct with which they contend NNGa's attorney failed to comply.) Instead, NNGa's counsel properly and professionally objected when necessary, extended professional courtesies to counsel for all parties, and protected the witness' and her students' rights and privileges. None of that justifies the imposition of sanctions.

**WHEREFORE**, for the above and foregoing reasons, Defendants pray that Plaintiffs' Motion for Sanctions be denied. These Defendants further pray that, pursuant to O.C.G.A. §9-11-37(4)(B), this court order Plaintiffs to pay all costs associated with responding to this Motion.

This 27th day of June, 2011.

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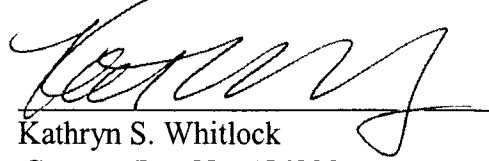
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