

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 14-cv-1242 (RCL)
)	
U.S. DEPARTMENT OF STATE,)	
)	
Defendant.)	

Plaintiff’s Motion to Depose Benjamin Rhodes

Plaintiff does not seek to relitigate the Court’s prior decision to authorize the service of interrogatories on Benjamin Rhodes. Neither the U.S. Department of Justice (representing Defendant State Department) nor Plaintiff, however, has been able to contact Mr. Rhodes. Because Mr. Rhodes appears to be defying the Court’s order, Plaintiff respectfully requests authorization to depose Mr. Rhodes so that it may serve him with a subpoena and compel him to appear pursuant to Rule 45 of the Federal Rules of Civil Procedure.

Statement of Points and Authorities

1. The Court authorized Plaintiff to serve interrogatories on four former government employees: Susan Rice, Mr. Rhodes, Monica Hanley, and Lauren Jiloty. Memorandum and Order (ECF No. 65) at 13-15.
2. As former government employees, Plaintiff asked DOJ to assist it in contacting each individual. DOJ has contacted and is making arrangements for service of interrogatories for everyone except Mr. Rhodes.

3. On February 13, 2019, DOJ agreed to attempt to contact Mr. Rhodes. On March 5, 2019, DOJ informed Plaintiff, without any detail, that its efforts to contact Mr. Rhodes “have been unsuccessful” and that it “[has] not determined whether or not Mr. Rhodes has counsel who will be representing him in connection with this matter.” DOJ then suggested that Plaintiff “should proceed however you see fit with respect to the interrogatories you intend to serve on Mr. Rhodes, without waiting to hear anything further from us regarding this issue.”

4. Plaintiff has since made attempts to contact Mr. Rhodes. Since a telephone number for Mr. Rhodes is unavailable, Plaintiff attempted to contact Mr. Rhodes by email on March 6, 2019. Not only did the email inform Mr. Rhodes about (and provided him a copy of) the Court’s order, it also provided him with the contact information for the DOJ attorneys assigned to this case.

5. Plaintiff also attempted to contact Mr. Rhodes by Federal Express. On March 8, 2019, a letter containing the same information as the email was delivered to a known address for Mr. Rhodes. The delivery was accepted and signed for by “B. Bianca.”

6. To date, neither Plaintiff nor DOJ has received a response from Mr. Rhodes.

7. Plaintiff does not believe the Federal Rules of Civil Procedure authorize it to serve a subpoena on Mr. Rhodes to compel him to answer interrogatories. Nor is Plaintiff aware of another mechanism within the rules to do the same.

8. Plaintiff therefore respectfully requests the Court authorize Plaintiff to depose Mr. Rhodes so that it may serve him with a subpoena and compel him to attend a deposition pursuant to Rule 45.

9. Plaintiff conferred with DOJ regarding this motion. DOJ requested Plaintiff include the following: “Defendant opposes the relief requested in Judicial Watch’s motion. Even

setting aside Defendant's continued objection to the propriety of any discovery of Mr. Rhodes (a former Deputy National Security Advisor who is not a party to this FOIA litigation and who has never before worked at the State Department), see Def.'s Proposed Discovery Plan, ECF No. 63, at 11-12, Plaintiff would still need to serve any Rule 45 subpoena on Mr. Rhodes. So the relief Plaintiff seeks would not actually remedy the problem complained of."

10. Defendant's position makes little sense. It is not that Plaintiff cannot locate Mr. Rhodes; it is that Plaintiff does not believe the Federal Rules allow for the service of a subpoena in this situation. Moreover, DOJ has not stated that it cannot locate Mr. Rhodes; it simply states that it has not been able to "contact" him. Authorizing Plaintiff to utilize Rule 45 would resolve this issue.

Dated: March 19, 2019

Respectfully submitted,

JUDICIAL WATCH, INC.

/s/ James F. Peterson
James F. Peterson (D.C. Bar 450171)

Attorneys for Plaintiff