

**IN THE CIRCUIT COURT OF THE TWELTH JUDICIAL CIRCUIT  
IN AND FOR SARASOTA COUNTY, FLORIDA  
CIVIL DIVISION**

Michael T. Flynn,  
Plaintiff,

v.

Case No.: 2023 CA 004264 NC

Jim Stewartson,  
Rick Wilson,  
Defendants.

\_\_\_\_\_ /

**DEFENDANT JIM STEWARTSON'S MOTION FOR ORDER TO SHOW CAUSE  
AND COMPEL THE DEPOSITION OF THE PLAINTIFF AND FOR SANCTIONS**

Defendant, JIM STEWARTSON, by and through his undersigned counsel, and pursuant to Fla. R. Civ. P. 1.280(c) and Fla. R. Civ. P. 1.380, hereby files this Motion for Order to Show Cause and to Compel the Deposition of the Plaintiff and for Sanctions, and hereby moves this Court for an Order requiring Plaintiff, MICHAEL T. FLYNN, to appear and show cause why sanctions should not be imposed for failure to appear for deposition, and compelling Plaintiff's deposition and imposing appropriate sanctions, and in support thereof states as follows:

**I. INTRODUCTION**

Defendant Stewartson is requesting that this Court compel the Plaintiff's attendance at a deposition and enter an order to appear and show cause for why sanctions should not be imposed for his failure to attend previously scheduled depositions. On two occasions, Plaintiff has sought to reschedule his deposition on the eve of deposition due to last minute business trips; on the first occasion, defense counsel begrudgingly obliged such a request but the request was declined on the second occasion.

The deposition of a plaintiff in a defamation action is critical because the Plaintiff's testimony is central to the elements of the claim, including the falsity of the statement, the existence of actual damages, and whether the defendant acted with the requisite level of fault. Defamation cases are peculiarly fact-sensitive and often hinge on the plaintiff's own version of events, making the plaintiff's sworn testimony essential to the defense's preparation. Without the plaintiff's deposition, the defendant is severely prejudiced in challenging the plaintiff's claims, evaluating defenses such as truth, privilege, or lack of actual malice, and assessing damages. Courts have repeatedly emphasized that discovery obligations must be enforced where a party's testimony is pivotal to the core issues of the litigation. Therefore, compelling the plaintiff's deposition in a defamation case is not merely procedural—it is foundational to the defendant's right to a fair defense.

Plaintiff's failure to attend his scheduled depositions is willful noncompliance and bad faith conduct for which this Court should dismiss and strike his Second Amended Complaint. In the event that this Court declines to dismiss and strike Plaintiff's Second Amended Complaint as a sanction for Plaintiff's conduct, this Court should still impose additional sanctions including but not limited to attorney's fees and costs incurred by Plaintiff's failure to attend and in the filing of this Motion.

## **II. PROCEDURAL BACKGROUND**

1. On or around February 11, 2025, after receiving no cooperation in scheduling from Plaintiff's counsel in spite of repeated efforts, counsel for Defendant Stewartson noticed the Plaintiff's deposition for March 4, 2025 in-person in Sarasota County, Florida. [A copy of the Notice—which notates the scheduling efforts—is on the docket at DIN # 140].
2. On or around March 2, 2025, counsel for the Plaintiff confirmed that the Plaintiff was prepared to attend the deposition scheduled for March 4, 2025. A copy of this email is attached as **Exhibit 1** to this Motion.

3. On March 3, 2025 at approximately 1:00pm, counsel for the Plaintiff informed defense counsel that the Plaintiff would be unavailable to attend his scheduled deposition *the following day* as the Plaintiff “needs to be in DC for business tonight through Thursday.” No Motion for Protective Order was ever filed with the Court. While the Defendant absolutely could have sought sanctions against the Plaintiff for this conduct, the Defendant attempted to resolve the matter in good faith with Plaintiff and his counsel by agreeing to reschedule.
4. On March 7, 2025, an Amended Notice of Taking Deposition was filed with the Court [DIN # 155]. This Notice both rescheduled the deposition for March 25, 2025 and changed the deposition to a deposition *duces tecum*.
5. Subsequently, the parties agreed to reschedule the Plaintiff’s deposition to April 28, 2025. An Amended Notice of Taking Deposition was filed with the Court on April 11, 2025 [DIN # 169]. The Amended Notice of Taking Deposition requested the same documents as in DIN #155.
6. At approximately 3:43pm on Friday April 25, 2025, the business day preceding Plaintiff’s deposition, Plaintiff’s counsel once again informed Defendant’s counsel (by telephone) that Plaintiff was unable to attend his deposition *the following business day* for the same reason as for the March date—an emergency business trip to Washington D.C.. Defendant’s counsel did not agree to this request, and explicitly informed Plaintiff’s counsel that Plaintiff must attend his deposition unless the Court enters an order excusing his attendance. This phone call was memorialized in an email sent by Plaintiff’s counsel and Defendant’s position is memorialized in a response (both of which are attached as **Exhibit 2**).
7. On April 25, 2025 at 9:53:47pm, Plaintiff filed an Emergency Motion for Protective Order requesting that Plaintiff be excused from attending his deposition scheduled for April 28, 2025 [DIN # 172] because of this

business trip to Washington D.C. and the need for some sort of confidentiality agreement.

8. In his Motion, Plaintiff alleged that his “presence in Washington, D.C. has been directed by his superiors.” No corroborating documents were attached to Plaintiff’s Motion, and it is unclear as to who his superiors are and what authority they may have to excuse the Plaintiff’s attendance at a mandatory court proceeding.
9. On April 28, 2025, Plaintiff failed to attend his deposition. A copy of the Certificate of Non Attendance is attached as **Exhibit 3** to this Motion.
10. The Court did not excuse Plaintiff’s attendance at the deposition. In this Court’s Interim Order on Plaintiff’s Emergency Motion for Protective Order [DIN # 171], the Court stated that it was “unclear” about “the specific reason or reasons for the delay.” A copy of this Order is attached as **Exhibit 4** to this Motion.
11. In the 2 ½ months since Plaintiff’s deposition was originally noticed, Plaintiff took no steps to seek a protective order regarding the confidentiality of potential testimony. In the over three (3) months since Plaintiff filed his Motion for Protective Order, Plaintiff has taken no steps to have its Motion for Protective Order set for hearing or to negotiate an agreed confidentiality order. Accordingly, it seems as though Plaintiff’s Motion for Protective Order was primarily for the purposes of postponing a deposition.
12. In fact, in **Exhibit 1**, Plaintiff’s counsel said that Plaintiff was “prepared to appear” for his deposition in spite of no confidentiality agreement. In that email, Plaintiff’s counsel indicated that Plaintiff was “unclear” as to who would be providing language or terms for a proposed confidentiality agreement. After that email, no additional conversations took place regarding a potential confidentiality agreement.

### III. LEGAL ARGUMENT

Plaintiff was scheduled and noticed for a deposition that he did not attend and was not excused from. It is well-established law that the filing of a Motion for Protective Order does not excuse a party from appearing at a deposition unless and until the court grants the motion. *Stables v. Rivers*, 559 So. 2d 440, 440 (Fla. 1st DCA 1990) (“Petitioners argue that the filing of the motion for protective order acted as an automatic stay of the scheduled depositions. We find no support for this contention in the Florida Rules of Civil Procedure.”); *Rahman Momenah v. Ammache*, 616 So. 2d 121, 124 (Fla. 2d DCA 1993). Additionally, the Plaintiff was not diligent in filing the motion. *Rahman Momenah*, 616 So. 2d at 124. Accordingly, the imposition of sanctions is appropriate.

The representation that Plaintiff’s “superiors”—whoever those people may be—directed his presence in Washington D.C. has no bearing on Plaintiff’s obligation to attend his own deposition or this Court’s imposition of sanctions upon him. The case of *Tumer v. Anderson*, 376 So. 2d 899 (Fla. 2d DCA 1979) deals with the imposition of sanctions on a Plaintiff, who is an active duty member of the military, for non-attendance at his deposition due to having no leave time accrued. Similar to this instant case, before the second scheduled deposition date, the Plaintiff filed a Motion for Protective Order which was not adjudicated at or before the time of the deposition that the Plaintiff did not attend. *Id.* at 900. Under these circumstances, the Second DCA ultimately held that the imposition of sanctions in the form of attorney’s fees was proper. *Id.* at 901.

While *Tumer* is good law which supports the Defendant’s position, the Plaintiff’s actions in this instant case are more extreme than that in *Tumer*. In *Tumer*, the Plaintiff was (1) an active duty military member who (2) was stationed outside of Florida and (3) provided corroboration from his superiors

for his inability to attend. *Id.* at 900. Meanwhile, in this instant case, there is no indication that the Plaintiff is an active duty military member (Plaintiff's retirement from the armed forces is well known), no indication that he is currently stationed outside the State of Florida (in fact, the Plaintiff alleges he resides in the venue of this litigation), and there is no corroboration from his superiors as to why he cannot attend. In fact, it is unclear as to who Plaintiff's "superiors" are—are these government or private-sector figures? Regardless of the answer, it is clear Plaintiff's conduct is still sanctionable.

Additionally, Plaintiff's Motion for Protective Order is legally insufficient. Florida courts disapprove of "the entry of protective orders prohibiting the taking of depositions generally and orders providing for lengthy postponements of discovery." *Bush v. Schiavo*, 866 So. 2d 136, 138 (Fla. 2d DCA 2004). A party seeking relief from discovery has the burden of establishing good cause. *City of Oldsmar v. Kimmins Contracting Corp.*, 805 So. 2d 1091 (Fla. 2d DCA 2002). The "good cause" to be shown to obtain a protective order should be specific and factual rather than based on conclusions. Good cause can be shown "by evidence: an affidavit, documents, testimony under oath, etc." *Kaminester v. State Farm Mutual Automobile Insurance Co.*, 775 So. 2d 981, 985 (Fla. 4th DCA 2001). The Plaintiff's Motion for Protective Order—which sought the postponement of the deposition on the April 28<sup>th</sup> date—was supported by conclusory allegations and was not supported by evidence such as affidavits or documents regarding or case law regarding either his inability to attend or the necessity of a confidentiality agreement.

Plaintiff's conduct is legally unwarranted, and sanctions pursuant to Fla. R. Civ. P. 1.380 are appropriate. While the sanction of dismissal should only be invoked in flagrant cases and then only after the court has given the defaulting party a reasonable opportunity to conform, this Court should warn Plaintiff that any further attempt not to appear at his duly scheduled deposition will constitute cause for the potential dismissal of his action.

#### **IV. CONCLUSION**

After engaging in previous delay tactics, Plaintiff failed to attend his scheduled deposition without good cause. Accordingly, Plaintiff should be compelled to appear at his deposition and also sanctioned.

WHEREFORE, Defendant, Jim Stewartson, respectfully requests that this Court enter an Order (1) requiring Plaintiff, MICHAEL T. FLYNN, to appear in person for his deposition in person in Sarasota County, Florida within thirty (30) days of this Order; (2) requiring Plaintiff, MICHAEL T. FLYNN, to appear and show cause before this Court as to why sanctions should not be imposed for failure to appear for deposition; (3) granting Defendant entitlement to their reasonable attorney's fees incurred in bringing forth this Motion; and (4) entering any such other sanction that this Court deems proper and just.

Dated: August 4, 2025

**/s/ George A.D. Thurlow**

George A.D. Thurlow, Esquire  
FBN 1019960

#### **CERTIFICATE OF CONFERRAL**

I certify that prior to filing this motion, I discussed the relief requested in this motion by ZOOM call on August 1, 2025 (and previously by telephone and email on April 25, 2025) with the opposing party and the opposing party disagrees on the resolution of all or part of the motion.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and proper copy of the foregoing document was served upon Jared Roberts, Esquire ([jared@binnall.com](mailto:jared@binnall.com)); Stephen B. French, Esquire ([stephen@binnall.com](mailto:stephen@binnall.com)); Craig A. Whisenhunt, Esquire ([craig@grwrlawfirm.com](mailto:craig@grwrlawfirm.com) and [efiling@rightingwrongsflorida.com](mailto:efiling@rightingwrongsflorida.com)) via the Florida E-Filing Portal on this 4th day of August, 2025.

**/s/ George A.D. Thurlow**

George K. Rahdert, Esquire

FBN 213365

George A.D. Thurlow, Esquire

FBN 1019960

Rahdert & Mortimer, PLLC

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Pinellas Park, FL 33781

Phone: (727)256-1660

Email: [craig@rwrlawfirm.com](mailto:craig@rwrlawfirm.com) [efiling@rightingwrongsflorida.com](mailto:efiling@rightingwrongsflorida.com)

Attorneys for Defendant, STEWARTSON

# EXHIBIT 1

**George Thurlow**

---

**From:** Jared Roberts <jared@binnall.com>  
**Sent:** Sunday, March 2, 2025 1:10 PM  
**To:** Craig Whisenhunt; George Thurlow  
**Cc:** Stephen French  
**Subject:** Flynn/Stewartson

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Counsel,

I hope this email finds you well.

How we left the last conversation, certain things remained unclear from our perspective. Specifically, we were unsure if you would be providing language for a confidential agreement/protective order, and whether you would provide narrower requests and/or search terms.

In light of this, please let me know if the deposition is going forward on Tuesday. We are prepared to appear. Alternatively, however, we could make our client available towards the end of the month.

We would also like to continue our discussion of a new case management plan, due to settlement discussions stalling.

All the best,

**Jared J. Roberts**  
**Senior Associate** | Binnall Law Group  
717 King Street | Suite 200 | Alexandria, VA 22314  
(585) 297-0202 (direct)  
(703) 888-1943 (office)  
[jared@binnall.com](mailto:jared@binnall.com)



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## George Thurlow

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**From:** George Thurlow  
**Sent:** Monday, March 3, 2025 1:22 PM  
**To:** jared@binnall.com  
**Cc:** stephen@binnall.com; Craig Whisenhunt; grahdert; Teresa McCreary  
**Subject:** Flynn v. Stewartson, et al--Plaintiff's Deposition

Jared,

This email is to confirm our phone call a few minutes ago where you informed me that your client is unable to attend his deposition scheduled for tomorrow, in spite of your email at 1:11pm yesterday and phone call earlier today where you confirmed your client's ability to attend.

You said that you will provide three new potential dates for your client's deposition. There is currently a discovery cutoff of March 13<sup>th</sup>, and the only date I am available between now and then is March 12<sup>th</sup>. Alternatively, we can discuss an agreed motion to extend the discovery cutoff as part of a new case management plan your email yesterday seemed interested in discussing. Regardless, we ask that we have these new dates by the end of business today. If we have them by the end of business today, we can file an Amended Notice of Taking Deposition. If we do not have them, we may need to resort to filing a Motion to Compel Deposition and/or for Sanctions for last minute cancellation.

### George Thurlow, Esq.

Associate Attorney  
Rahdert & Mortimer, PLLC  
535 Central Avenue  
Suite 200  
St. Petersburg, FL 33701  
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## EXHIBIT 2

### George Thurlow

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**From:** George Thurlow  
**Sent:** Friday, April 25, 2025 4:25 PM  
**To:** 'Jared Roberts'; Craig Whisenhunt  
**Cc:** Craig Whisenhunt; Stephen French; grahdert; Teresa McCreary  
**Subject:** RE: Flynn/Stewartson Walk Away

Given that this is repeated conduct on behalf of your client, we will be seeking sanctions. We warned you that we would do that the last time it happened but resolved the issue in good faith, and yet it has happened again. That is a pattern of conduct.

The filing of a Motion for Protective Order does not excuse your client from attending his deposition. Unless there is a signed order from the Judge excusing your client's attendance, we expect that your client will be in attendance. Your phone call and email is legally insufficient to excuse your client's non-attendance.

### George A.D. Thurlow, Esq.

Associate Attorney  
Rahdert & Mortimer, PLLC  
535 Central Avenue, Suite 200  
St. Petersburg, FL 33701  
[gthurlow@rahdertlaw.com](mailto:gthurlow@rahdertlaw.com)  
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**From:** Jared Roberts <jared@binnall.com>  
**Sent:** Friday, April 25, 2025 4:19 PM  
**To:** Craig Whisenhunt <craig@rightingwrongsflorida.com>  
**Cc:** George Thurlow <GThurlow@rahdertlaw.com>; Craig Whisenhunt <craig@rwrlawfirm.com>; Stephen French <stephen@binnall.com>; grahdert <grahdert@rahdertlaw.com>; Teresa McCreary <TMcCreary@rahdertlaw.com>  
**Subject:** Re: Flynn/Stewartson Walk Away

George,

This email memorializes our conversation in which I informed you that our client is unavailable to appear for deposition on Monday. As I told you, our client will be in Washington, D.C. as directed by others. We will provide substitute dates as soon as possible. Based upon our inability to resolve this matter amicably, we will be moving the court to enter a protective order. With this email, you are on notice that our client will not be in attendance on Monday April 28, and is not responsible for the incursion of any

costs for the court reporter. We look forward to resolving this matter soon. Thank you for your consideration of this matter.

On Tue, Apr 15, 2025 at 2:36 PM Jared Roberts <[jared@binnall.com](mailto:jared@binnall.com)> wrote:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On Mon, Mar 24, 2025 at 5:24 PM Jared Roberts <[jared@binnall.com](mailto:jared@binnall.com)> wrote:

As a follow up, April 28 works best on our end.

On Mon, Mar 24, 2025 at 3:54 PM Jared Roberts <[jared@binnall.com](mailto:jared@binnall.com)> wrote:

Craig,

That is as good a reason as any. We will get you an answer as to which of the other dates, toward the end of April, works best for us ASAP, while we continue to work toward a resolution.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
IN AND FOR SARASOTA COUNTY  
CIVIL DIVISION

CASE NO.: 2023 CA 004262 NC

MICHAEL T. FLYNN,  
Plaintiff,

vs.

JIM STEWARTSON,  
RICK WILSON,

Defendants.

CERTIFICATE OF NONAPPEARANCE

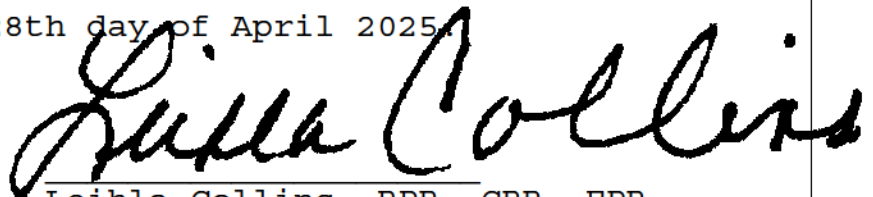
In re: Deposition of Michael T. Flynn

STATE OF FLORIDA )  
COUNTY OF SARASOTA )

I, Leihla Collins, RPR, CRR, FPR, do hereby certify that I appeared at U.S. Legal Support, 401 North Cattlemen Road, Suite 104, Sarasota, Florida, on Monday, April 28, 2025, at 9:30 a.m. for the purpose of reporting the deposition of Michael T. Flynn and that the witness did not appear for the scheduled deposition by 10:00 a.m. Also present was George A.D. Thurlow, Esquire.

Under penalties of perjury, I declare that I have read the foregoing certificate, and that the facts stated in it are true.

DATED THIS 28th day of April 2025.



Leihla Collins, RPR, CRR, FPR  
U.S. Legal Support, Inc.  
401 N. Cattlemen Road, Suite 104  
Sarasota, Florida 34232  
(941)954-0020

# EXHIBIT 4

IN THE TWELFTH JUDICIAL CIRCUIT COURT  
IN AND FOR SARASOTA COUNTY, FLORIDA

MICHAEL T FLYNN,  
Plaintiff,

v.

CASE NO. 2023 CA 004264 NC  
DIVISION C CIRCUIT

JIM STEWARTSON,  
RICK WILSON,  
MEIDASTOUCH LLC,  
Defendant.

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**INTERIM ORDER**  
**ON PLAINTIFF'S EMERGENCY MOTION FOR PROTECTIVE ORDER**


This is not an emergency.

Having said that, the Court is not opposed to the entry of a confidentiality order. If Defendant does not believe a confidentiality order is necessary, then the Court suggests the parties schedule a quick case management conference. Please note: the Court will not enter any confidentiality order that attempts to alter the requirements of Florida Rule of General Practice and Judicial Administration 2.420.

As it relates to today's deposition, the Court expects the parties to try to resolve this issue. Further, it is unclear to the Court the specific reason or reasons for the delay. Is it due to an unexpected work issue? Is it due to the confidentiality issue? Is it both? Is it something else? Because the parties did not address this issue until the morning of the deposition, the Court simply is not in a position to rule. Defendant has not had an opportunity to respond.

For those reasons, the Court does not address whether the deposition should or should not proceed today.

DONE AND ORDERED in Sarasota, Sarasota County, Florida, on April 28, 2025.

  
4/28/2025 9:27 AM 2023 CA  
004264 NC  
e-Signed 4/28/2025 9:27 AM 2023 CA 004264 NC

**HUNTER W CARROLL**  
Circuit Judge

**SERVICE CERTIFICATE**

On April 28, 2025, the Court caused the foregoing document to be served via the Clerk of Court's case management system, which served the following individuals via email (where indicated). On the same date, the Court also served a copy of the foregoing document via First Class U.S. Mail on the individuals who do not have an email address on file with the Clerk of Court.

GEORGE KARL RAHDERT  
535 CENTRAL AVE  
SAINT PETERSBURG, FL 33701

JONATHAN R HUFFMAN  
3021 AIRPORT-PULLING RD N.  
SUITE 202  
NAPLES, FL 34105

STEPHEN B FRENCH  
717 KING STREET  
SUITE 200  
ALEXANDRIA, VA 22314

CRAIG A WHISENHUNT  
8130 66TH ST. N  
SUITE 3  
PINELLAS PARK, FL 33781

JARED J ROBERTS  
717 KING ST STE 200  
ALEXANDRIA, VA 22314

GEORGE A D THURLOW  
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LEONARD M COLLINS  
GRAYROBINSON, P.A.  
301 S. BRONOUGH STREET, SUITE 600  
TALLAHASSEE, FL 32301