

## Sanctions

# Taped Deposition Not "Reality TV"

*Counsel sanctioned for providing videotape to reporters*

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After videotaping the deposition of a corporate defendant's CEO, plaintiff's counsel gave the tape to television reporters from Fox Network's news-magazine show *A Current Affair*. New York Supreme Court Justice Kenneth A. Davis sanctioned two of the attorneys involved, finding that their actions were "deliberate and calculated to harass and maliciously injure defendants." *Seaman v. Wyckoff Heights Medical Center, Inc.*

"The court felt that plaintiff's counsel had made some misrepresentations to the court about why they were videotaping. That would justify sanctions in most courts' minds," reflects John J. Bouma, Phoenix, AZ, Co-Chair of the Section of Litigation's Image of the Profession Task Force.

Before the deposition, defendants sought a protective order, arguing that the plaintiff wanted the videotape only to embarrass

*The court found that the plaintiff's subsequent justifications for disseminating the tape were "disingenuous."*

and/or harass the CEO. The plaintiff responded she needed to videotape because she and her brother, who was co-counsel, would "probably be unable to attend." She further contended the CEO was "the most 'high profile' party" involved, and disclaimed any improper motive. The

special referee permitted the videotaping, subject to certain restrictions on inquiries about personal issues.

After the deposition concluded, plaintiff's counsel, citing a client emergency, left abruptly. As the CEO departed the deposition, a reporter from *A Current Affair* tried to interview him.

When the defendants sought sanctions, plaintiff's counsel argued that the plaintiff needed to "go public" after reading a September 2004 news report and after the defendants' counsel "goaded" the plaintiff at her October 2004 deposition—six months before the CEO's deposition. Plaintiff's counsel admitted that the producer of *A Current Affair* was also a friend and client.

In awarding sanctions, the court considered two sections of the New York Code of Professional Responsibility: DR 7-102(a) (1) prohibits taking any action to "harass or maliciously injure another"; DR 7-107(a) prohibits "extrajudicial statements . . . that . . . have a substantial likelihood of materially prejudicing an

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adjudicative proceeding." The court found that plaintiff's counsel had not been candid in opposing the motion for a protective order, and that the subsequent justifications for disseminating the tape were "disingenuous."

## Resources:

*Seaman v. Wyckoff Heights Med. Ctr., Inc.*, No. 05/25188, \_\_\_ N.Y.S.2d \_\_\_, 2005 WL 1173540 (N.Y. Sup. Ct. Mar. 29, 2005).

*Flaherty v. Seoussi*, 209 F.R.D. 295 (N.D.N.Y. 2001) (denying protective order to prevent plaintiff from giving deposition videotape to media).

*State of New York v. Microsoft Corp.*, 206 F.R.D. 19 (D.D.C. 2002) (granting media access to redacted transcripts and videotapes of some depositions).

N.Y. CODE PROF. RESP. DR 7-102(a)(1), 7-107(a), available at [www.nysba.org](http://www.nysba.org), click "Publications."

*The defendants argued that the plaintiff wanted the videotape to "embarrass" the CEO.*

Providing a deposition videotape to the press is not necessarily wrongful. Other courts have allowed media access to deposition transcripts and videotapes under various circumstances. Although depositions are not public, materials filed with the court generally become public. If filing deposition testimony with a court makes it public, barring a lawyer from provid-