

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - -X

S.W., et al.

Plaintiffs,

- against -

ORDER

THE CITY OF NEW YORK, et al.,

CV 2009-1777 (ENV) (MDG)

Defendants.

- - - - -X

This order concerns a subpoena served on:

RHONDA MORGAN,  
defaulting Third Party Defendant.

- - - - -X

This Order concerns a deposition subpoena served on RHONDA MORGAN by the City of New York and the Administration for Children's Services (the "City defendants"). Although Ms. Morgan has been sued by the City defendants and other defendants, she has not formally appeared in this action and default has been entered against her.<sup>1</sup> In its letter motion to compel Ms. Morgan to appear for a deposition, counsel for the City defendants claims Ms. Morgan has knowledge of information critical to this case, but has refused to appear at a deposition. Ct. doc. 234.

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<sup>1</sup> Ms. Morgan sent a letter dated September 21, 2010 to the Court advising that she does not have money for an attorney and is not in default. See ct. doc. 200. The question of Ms. Morgan's default and lack of legal representation will be addressed later at a conference, which the Court shall schedule if the pending motions to dismiss the third party complaint are denied by the Court or if any claims against Ms. Morgan remain.

Rule 45 of the Federal Rules of Civil Procedure provides that an attorney, as an officer of the court, may issue a subpoena on behalf of a court in which the attorney is authorized to practice, or for a court in a district in which a document production is compelled by the subpoena. Fed. R. Civ. P. 45(a)(3). Valid attorney-issued subpoenas under Rule 45(a)(3) operate as enforceable mandates of the court on whose behalf they are served. See, e.g., Advisory Committee Notes, 1991 Amendment to Fed. R. Civ. P. 45; Board of Governors of Federal Reserve System v. Pharaon, 140 F.R.D. 634, 641-42 (S.D.N.Y. 1991).

Absent an improperly issued subpoena or an "adequate excuse" by the non-party, failure to comply with a subpoena made under Rule 45 may be deemed a contempt of the court from which the subpoena issued. Fed. R. Civ. P. 45(e); see also Daval Steel Products v. M/V Fakredine, 951 F.2d 1357, 1364 (2d Cir. 1991). Indeed, the judicial power to hold a non-party who has failed to obey a valid subpoena in contempt is the primary mechanism by which a court can enforce a subpoena. See David D. Siegel, Fed. R. Civ. P. 45, Practice Commentaries, ¶C45-26.

Having examined the subpoena and affidavit of service submitted by the City defendants, the Court finds that the subpoena in question appears to be valid and properly served upon Ms. Morgan. Ms. Morgan is advised that she must thus comply with the subpoena and appear for a deposition, even if she does not have much information on Judith Leekins, as claimed in her letter. She is obligated to appear at a deposition and answer

questions posed by counsel for the City defendants about Ms. Leekins or any other issue relevant to this case.

**CONCLUSION**

RHONDA MORGAN is hereby ORDERED to comply with the subpoena served upon her. She must immediately call Bruce Strikowsky or Carl Schaerf, the attorneys for the City defendants, to arrange for a mutually convenient date for her to appear at a deposition to give testimony and to produce documents requested by the subpoena. She must call these attorneys by December 1, 2010 and appear for a deposition to be held on or before December 30, 2010.

**RHONDA MORGAN is warned that if she fails to comply with this order, she could be subject to contempt proceedings for failure to respond to the subpoena and this order. If found to be in contempt of the subpoena or this order, she could be subject to sanctions, including imposition of a monetary fine, attorneys fees and costs. If the failure to comply continues, the court could issue a warrant of arrest for failure to comply with a court order.**

**SO ORDERED.**

Dated: Brooklyn, New York  
November 17, 2010

/s/ \_\_\_\_\_  
MARILYN D. GO  
UNITED STATES MAGISTRATE JUDGE

Mailed to:  
Rhonda Morgan  
451 Fulton Street, Apt. 3  
Hempstead, NY 11501