

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

IN THE MATTER OF THE)
CONSERVATION OF NEXTLEVEL) **No. 2020 CH 4431**
HEALTH PARTNERS, INC.)

**NEXTLEVEL HEALTH PARTNERS, INC.’S OPPOSITION
TO INTERVENOR’S SUPPLEMENTAL MOTION**

On June 8, 2022, Intervenor Jaqueline Stevens (“Intervenor”) submitted a supplemental motion (“Supp. Mot.”) requesting various forms of relief. On June 13, 2022, the Court ordered further briefing on the portion of Intervenor’s motion requesting sanctions but denied all other relief sought in the motion. *See* Schwab Decl. Ex. 1. NextLevel Health Partners, Inc. (“NextLevel”) respectfully submits this response in opposition to Intervenor’s request for sanctions.¹

I. Background

At a lengthy sequestered hearing on November 29, 2021,² the Court declared that Exhibits A and B to the Declaration of Glenn A. Giese in support of the Agreed Motion for an Order Authorizing and Approving the Member Transfer Agreement would remain under seal. The order entered on that date confirms that the Court also accepted NextLevel’s proposed redactions to Paragraphs 13 and 14 of the Verified Complaint for Conservation of Assets and Injunctive Relief (the “Complaint”) and the proposed redaction to Paragraph A(iii) on Page Two

¹ Should the Court deny Intervenor’s request for sanctions, NextLevel respectfully requests that Intervenor be dismissed from these proceedings, as she would have no remaining claims left in this case.

² The hearing began at 2:03 p.m. and ended at 3:10 p.m. Intervenor had previously filed her initial motion, but the Court directed at a confidential status hearing on November 5, 2021 that Intervenor should not be included in this hearing because the issue of confidentiality of certain material had not been resolved (as reflected in the Court’s order entered October 28, 2021). Accordingly, NextLevel must tread carefully in describing the events of the confidential November 29 hearing because it does not intend to waive such protection. NextLevel therefore will describe only such portions as are relevant to resolution of Intervenor’s request for sanctions.

of the Order of Conservation of Assets and Injunctive Relief (the “Conservation Order”). The Court directed that NextLevel should submit to the Court conformed versions of those documents reflecting NextLevel’s proposed redactions, that the original versions of the documents would be kept under seal, and that redacted versions would replace them on the public record. Counsel for both NextLevel Stephen Schwab and the Conservator Daniel Guberman recall that the Court instructed counsel to submit the redacted versions *to the Court* at the November 29, 2021 hearing, and expressed that the Court would “work with the Clerk” to accomplish replacement of the original Complaint and Conservation Order with the redacted versions. Schwab Decl. ¶ 11. The Court also expressed “appreciat[ion]” for the “narrowed redactions” NextLevel had proposed, and noted that the Docket was “unreadable.”

On December 1, 2021, counsel for NextLevel sent an email pursuant to the Court’s instructions at the November 29, 2021 hearing, attaching a proposed order for entry along with copies of the Complaint and Conservation Order containing NextLevel’s proposed redactions. *See* Schwab Decl. Ex. 2. Given that unredacted versions of both documents were already on file and that NextLevel had provided the Court redacted versions, counsel’s understanding and belief based on the foregoing facts was that NextLevel was in compliance with the Court’s November 29, 2021 order as of December 1, 2021. An email from counsel for the Special Deputy sent an email on May 3, 2021 confirms this understanding. *See* Schwab Decl. Ex. 3. The Court will recall confirming to counsel for the Special Deputy, the Illinois Department of Insurance, and NextLevel on November 5, 2021 that the Court had communicated with the Clerk about the matter. Schwab Decl. ¶ 10.

On May 3, 2022, Intervenor emailed counsel for NextLevel asking whether NextLevel had filed redacted versions and stating that she only saw the redacted versions as exhibits to

NextLevel’s motion and not as separate filings. Counsel for the Special Deputy replied recalling that the Court’s order required that the unredacted copies be replaced, not that new filings be made, and that the Court was provided redacted copies to effectuate the replacement. Counsel for NextLevel responded confirming the same understanding. Schwab Decl. Ex. 3. Intervenor then replied, disagreeing with that understanding, referencing the November 29 order, and threatening to file a “supplemental motion.” *Id.* Counsel for NextLevel responded that it would not be necessary to take that step because NextLevel would refile the documents to avoid any doubt about the extent of its obligations under the November 29, 2021 order. On May 5, 2022, NextLevel in fact filed the redacted Complaint and Conservation Order.³

On June 8, a few hours before a hearing on the merits of her intervention, Intervenor filed a “supplemental motion” seeking various forms of relief, including a request for sanctions under Illinois Supreme Court Rule 137, alleging that counsel for NextLevel made knowing misrepresentations and engaged in other forms of misconduct regarding the process of replacing unredacted docket items with redacted versions. On June 13, 2022, the Court denied Intervenor’s original motion on the merits and most of the requests in her supplemental motion, except that the Court ordered additional briefing on the sanctions request. The Court’s order noted that the Court “has been in communication with the Clerk’s office with some frequency in an effort to ensure that its orders are properly implemented in this case” and that it would “continue to assist if additional problems [were] brought to its attention.” Schwab Decl. Ex. 1.

II. Legal Standard

Illinois Supreme Court Rule 137 provides that an attorney’s signature on a document

³ Out of an overabundance of caution and respect, NextLevel’s counsel on June 16, 2022 again communicated with the Clerk and confirmed that the unredacted versions of the Complaint and Conservation Order will be placed under seal and only the redacted versions will be available on the public Docket.

certifies that the document “to the best of [the attorney’s] knowledge, information, and belief formed after reasonable inquiry . . . is well grounded in fact and is warranted by existing law . . . , and that it is not interposed for any improper purpose.” Rule 137 is not a remedy for any alleged misconduct—it should be “applied only to those cases falling strictly within the terms of the rule.” *In re Marriage of Sykes*, 231 Ill. App. 3d 940, 950 (4th Dist. 1992). The moving party bears the burden of proof to show that the other party made false allegations without reasonable cause. *U.S. Bank Tr., N.A. v. Burnett*, 2021 IL App (1st) 210135, ¶ 38.

The purpose of Rule 137 is to “discourage baseless actions and frivolous motions.” *Id.* ¶ 42. That purpose is not served by engaging in “nitpicking.” *Sykes*, 231 Ill. App. 3d at 947. Rule 137 is reserved only for “the most egregious of cases” and strictly construed. *Burnett*, 2021 IL App (1st) 210135, ¶¶ 37, 54 (reversing sanctions order). Rule 137 “does not authorize sanctions for misunderstandings.” *Lewy v. Koeckritz Int’l, Inc.*, 211 Ill. App. 3d 330, 335 (1st Dist. 1991).

III. Argument

This is not an egregious case of lawyer conduct, much less one of the “most egregious of cases,” for at least four reasons. *Id.* ¶ 54. First, the Supplemental Motion does not point to any specific statement in NextLevel’s filings that purportedly violates Rule 137, merely stating instead that “[e]ach and every statement” from NextLevel’s briefs “averring the existence of a redacted Complaint and a redacted 2020 Order” violated the rule. *See* Supp. Mot. at 21. But redacted forms of the Complaint and Conservation Order *did* and continue to exist, and Intervenor had access to them. NextLevel submitted them to the Court on December 1, 2021. *See* Schwab Decl. Ex. 2. NextLevel also attached them as exhibits to its Memorandum in Opposition to Intervenor’s First Amended Intervenor Motion, which was filed on the public Docket. Intervenor has been denied nothing except the opportunity to publish a very small amount of

material that the Court ordered redacted.

Second, counsel's belief that NextLevel was in compliance with the Court's November 29, 2021 order as of December 1, 2021 was objectively reasonable based on the Court's direction at the November 29, 2021 hearing. Counsel for the Special Deputy confirmed the same understanding. *See* Schwab Decl. Ex. 3. As the Court noted during the November 5 and 29, 2011 hearings, and confirmed in its June 13, 2022 order, the Court has been "in communication with the Clerk's office with some frequency" during this confidentiality dispute and expected to "continue to assist if additional problems [were] brought to its attention." *See* Schwab Decl. Ex. 1. The confidentiality issues presented in this case are of first impression. Resolving such issues in this case has not been simple, and both the parties and the Court have repeatedly been in contact with the Clerk of Court's office to ensure that the Court's orders were effectively implemented. There is no evidence of any bad faith by NextLevel. *See Cantrall v. Bergner*, 2016 IL App (4th) 150984, ¶ 29 (noting that "the degree of bad faith by the opposing party" is a "[f]actor[] a trial court might consider" in a Rule 137 analysis). Nor would NextLevel have anything to gain by "misrepresenting" or "withh[olding]" any information, *see* Supp. Mot. at 21, given that redacted versions of the Complaint and Conservation Order were already on the docket. Indeed, if anyone was harmed by the unredacted versions of the Complaint and Conservation Order being available in the public Docket, it is NextLevel, not Intervenor or the public she purports to represent.

Third, the issues raised in Intervenor's amended motion as grounds for sanctions have had no material impact on the outcome of any dispute in this case. *See Patton v. Lee*, 406 Ill. App. 3d 195, 200–01 (2d Dist. 2010) (affirming denial of sanctions where the alleged misconduct complained of was "inconsequential to the overall determination" of an issue); *First*

of Am. Tr. Co. v. First Illini Bancorp, Inc., 289 Ill. App. 3d 276, 289 (“Courts should consider whether the challenged factual allegation is material to the cause alleged when determining the reasonableness of the allegation.”). Intervenor’s purported reason for intervening in this case was to gain access to certain docket items for her work and to represent the interests of the public. The Court previously determined that certain docket items in this case should be redacted. Intervenor *already had access* to those redacted documents when she emailed counsel for NextLevel on May 3, 2022, raising issues about how NextLevel submitted them to replace the sealed versions on the docket. And on May 5, 2022, two days after Intervenor brought these issues to counsel’s attention and despite reasonably believing that NextLevel *already* complied with the Court’s orders, NextLevel filed the redacted versions on the public docket to avoid any doubt about whether its obligations were fulfilled. At that point, there was no need to escalate the matter further.

Fourth, and finally, to the extent that NextLevel’s May 5, 2022 filing “still failed to effectively replace the Complaint and 2020 Order with the redacted versions,” NextLevel has no control over what the Clerk of Court does after NextLevel files documents. Any discrepancy between what NextLevel has filed or submitted and what appears on the docket page is a court administrative matter rather than a dispute appropriate for motion practice. And it certainly does not warrant personal attacks against counsel for NextLevel and counsel for the Department of Insurance. *See* Supp. Mot. at 21.

IV. Conclusion

NextLevel respectfully requests that the Court deny Intervenor’s request for sanctions.

Dated: June 17, 2022

Respectfully submitted,

By: /s/ Stephen W. Schwab

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CERTIFICATE OF SERVICE

I certify that on June 17, 2022, I caused the foregoing document to be filed and served on all counsel of record.

/s/ Stephen W. Schwab

Attorney for NextLevel Health Partners, Inc.