

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

**IN THE MATTER OF THE CONSERVATION OF  
NEXTLEVEL HEALTH PARTNERS, INC.**

Jacqueline Stevens, Intervenor, *Pro Se*

2020 CH 04431

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**MOTION FOR RELEASE TO INTERVENOR OF COURT COMMUNICATIONS  
WITH OPPOSING COUNSEL AND TOLLING OF BRIEFING SCHEDULE**

Introduction

DLA Piper attorneys on June 17, 2022 filed “NextLevel Health Partners, Inc.’s Opposition to Intervenor’s Supplemental Motion” (“R. 137 Opp. Mot.”). The R. 137 Opp. Mot. references statements and communications with the Court not accessible to Intervenor. Intervenor’s efforts to obtain these *ex parte* communications from opposing counsel have been unsuccessful. Pursuant to Illinois Supreme Court Rule 65, A (5) and B (2), Intervenor respectfully requests the production of all communications to and from the Court or Court staff and opposing parties on which Intervenor was not copied pertaining to the filing and sealing of records in this proceeding produced about, on, and after the order of November 29, 2021, and a tolling of the briefing schedule on Intervenor’s Motion for the time frame it takes for these to be produced.

Proceeding History

On November 29, 2021, the Court issued an Order lifting the stay on ending sequestration and granting NextLevel’s motion to file exhibits under seal and replace the original Complaint of

June 3, 2020 and order of June 9, 2020 with versions that had portions redacted (“Lift and Seal Order”). On December 6, 2021, the court issued an order granting Jacqueline Stevens Intervenor status for the purpose of making arguments about the “public nature of these proceedings.” Intervenor filed her Amended Motion on January 31, 2022. On March 14, 2022, NextLevel filed its opposition response. On March 21, 2022 the People of Illinois representing the Department of Insurance filed its Opposition Response motion. Intervenor on April 4, 2022 filed a motion to obligate parties to notice all motions to Intervenor and to declare public all records for 2020 CH 04431 previously released by Chancery Division. On April 26, 2022, NextLevel filed its Sur-Reply. On June 8, 2022, Intervenor filed a motion for leave to file Supplemental Motion and attached as an exhibit a motion containing new evidence, a Sur-Sur Reply, and a motion for sanctions. Later that day, oral argument was held on the briefings and the Court announced an intention to issue the final judgment at 2 p.m. on June 13, 2022. On June 12, 2022, Intervenor filed a Motion to Postpone the Final Order. Following presentment at a hearing on June 13, 2022, the Court issued an order denying motions in the exhibit containing the supplemental motions with the exception of the motion for sanctions under Illinois Supreme Court Rule 137. The Court also denied the Motion for Postponement. In a written order issued later on June 13, 2022, the Court issued its final judgment on Intervenor’s Amended Motion and denied the motion to vacate the seal and redaction orders November 29, 2021. On June 21, 2022, Intervenor filed a Motion for Ruling on Relief Sought Pursuant to the Motion to Declare Public Records in the Public Record.

Communications Withheld in Violation of Rule 63, A(5), B(2)

DLA Piper's<sup>1</sup> R. 137 Opp. Mot. makes extensive reference to email and communications from the Court and Court staff associated with the Lift and Seal Order stamped November 29, 2021 and associated with a confidential hearing on that date:

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. Rule 137 Opp. Mot., p. 2.

Mr. Schwab does not indicate whether he sent or received any further communications to or from the Court associated with the subject matter of the email sent on December 1, 2021.

On June 22, 2022, Intervenor sent Mr. Schwab an email requesting he provide her "all responsive email from the Court to you related to the subject matter of your email of December 1, 2021." Email from Intervenor to Mr. Schwab, June 22 2022, "Exhibit 1." He did not reply.

Any communications from the Court or Court's staff to one party not shared with opposing parties are *ex parte* and in violation of Illinois Supreme Court Rule 63 A(5) and B(2). *Kamelgard v. Am. College of Surgeons*, 895 NE 2d 997 895 N.E.2d 997, 1001 (2008). ("The trial court ruled, and respondent underscores, that the judge herself did not contact petitioner's attorney. The judge stated, 'I did not communicate with opposing counsel. I had my law clerk

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<sup>1</sup> The Motion is captioned as being on behalf of NextLevel. However, the motion for sanctions under 137 is directed to the attorneys representing NextLevel. Attorney Sean Auton ("Auton") was introduced to the Court by attorney Stephen Schwab on June 8, 2022 as "outside general counsel" for NextLevel. On information and belief, Mr. Auton is employed by HMB Law and has not filed a notice of appearance for this case. Exhibit 1.

call. \* \* \* It was my law clerk that merely requested the documents that were referred to in the motion.’ Rule 63(B) is clear, however, that the judge's law clerk is an extension of the judge. ‘A judge should require staff, court officials and others subject to the judge's discretion and control to observe the standards of fidelity and diligence that apply to the judge.’ 210 Ill.2d R. 63(B)(2). The judge's clerk called respondent's attorney but not petitioner's attorney. Therefore, these calls constituted *ex parte* communications. See Black's Law Dictionary 597 (7th ed.1999) (an *ex parte* communication is a ‘communication between counsel and the court when opposing counsel is not present’).” Likewise, communications from the Court to Mr. Schwab referenced in the R. 137 Opp. Mot. and not shared with Intervenor are in violation of Rule 63(A). And, communications to and from the Court’s law clerk about the filing and sealing of records relevant to Intervenor’s Rule 137 Motion and not shared with Intervenor also are *ex parte* and in violation of Rule 63(B).

On information and belief, in addition to the *ex parte* communications referenced in the Declaration of Mr. Schwab, there are numerous other communications associated with the matter of records being filed and sealed relevant to Intervenor’s Rule 137 motion for sanctions about which the Court and opposing parties possess knowledge unavailable to Intervenor. Intervenor respectfully requests the production to her of all communications to and from the Court or Court staff and opposing parties on which Intervenor was not copied pertaining to the filing and sealing of records in this proceeding produced about, on, and after the order of November 29, 2021, and a tolling of the briefing schedule on Intervenor’s Motion for the time frame it takes for these to be produced.

Respectfully Submitted,  
/s/ Jacqueline Stevens  
JACQUELINE STEVENS  
Pro Se  
Professor, Political Science Department  
Northwestern University  
Evanston, IL 60208  
(847) 467-2093  
[jackiestevens@protonmail.com](mailto:jackiestevens@protonmail.com)  
June 23, 2022

VERIFICATION

I, the undersigned, swear under penalty of perjury, as provided by law under Section I-109 of the Illinois Rule of Civil Procedure, that the statements contained in this motion are true and correct to the best of my knowledge and belief, except where I lack sufficient knowledge to form a belief of the truth of the allegations, where so stated.



Jacqueline Stevens

Certificate of Service

I certify that on June 23, 2022, I caused the foregoing document to be filed and served on all counsel of record.