

PRK ENTERPRISES, INC., KLEIN	§	IN THE DISTRICT COURT OF
ENTERPRISES, INC., and PHILIP	§	
KLEIN,	§	
Petitioners,	§	
v.	§	
	§	JEFFERSON COUNTY, TEXAS
GOOGLE, INC., blogger.com,	§	
www.operationkleinwatch.blogspot.com,	§	
www.samtheeagleusa.blogspot.com,	§	
and MICHAEL NEIL HARRISON	§	
Respondents,	§	172nd JUDICIAL DISTRICT

**RESPONDENTS' MOTION FOR SANCTIONS FOR FAILURE TO SERVE OR
DELIVER COPIES OF PLEADINGS & MOTIONS TO ALL PARTIES**

The Court should order petitioners and their counsel to pay respondents' attorney's fees incurred as a result of petitioners' failure to serve Michael Neil Harrison with a copy of the motion for default judgment noticed for hearing on June 8, 2011.

I. INTRODUCTION

1. On **August 26, 2009**, petitioners filed their original petition under TEX. R. CIV. P. 202 seeking an order permitting pre-suit depositions to investigate claims of defamation, invasion of privacy, and copyright infringement claims. On **February 7, 2011**, petitioners filed their second amended petition, redesignating themselves as "plaintiffs" and purporting to transmute their Rule 202 petition into a suit for affirmative relief. On **May 6, 2011**, petitioners filed their third amended petition, abandoning the attempt to "convert" their original petition into a lawsuit and restoring this action to a petition for pre-suit depositions under Rule 202.

2. In the *two years* since filing their petition, petitioners have never set an evidentiary hearing for a ruling on whether depositions will be allowed.

II. FACTS PERTAINING TO THIS MOTION

3. On **June 2, 2011**, petitioners filed a motion for default judgment against respondent Michael Neil Harrison and served a notice of oral hearing to be held on **June 8, 2011**. Petitioners also served a notice of oral hearing to be held the same day on movant Michael Neil Harrison's motion to quash service of petitioners' second amended petition.

4. Harrison had previously set an oral hearing on his motion to quash for July 15, 2011. Counsel for petitioners, John Morgan, attempted to change Harrison's hearing on Harrison's motion from July 15, 2011, to June 8, 2011. Court Coordinator Donna Henry informed Mr. Morgan that attorneys are not permitted to change hearing dates on *other* parties' motions without such party's agreement. In a brazen tactic designed to increase the burden of this litigation on respondents, Morgan served respondents notice of a June 8, 2011, hearing on Harrison's motion *anyway*—knowing that the Court had already expressly disapproved his improper attempt to do this.

5. Morgan ignored several requests from respondents' counsel—who was scheduled to be in Chicago in the U.S. Bankruptcy Court for the Southern District of Illinois that same day—to reschedule the **June 8, 2011**, hearing on a date when counsel could attend. *See Exhibit A*. When Morgan refused to respond or reschedule, respondents' counsel made other arrangements for the Chicago hearing and travelled from Houston to Beaumont to attend the hearing on Harrison's motion to quash petitioners' motion for default judgment.

6. Respondents were present in the courtroom at 8:15 AM on June 8, 2011, and ready to proceed on the hearings petitioners had noticed. Harrison did not attend. The hearings did not take place. The Court did not wish to hear a matter involving Harrison *ex parte*. *The reason Harrison did not attend was petitioners never served Harrison with notice of the hearing.* **Exhibit B.**

III. ARGUMENT & AUTHORITIES

7. The importance of serving opposing parties with hearing notices hardly needs to be pointed out. Failure to serve can waste valuable judicial resources and cause unnecessary burden and expense on opposing parties—all of which it did here. For these reasons, the rules have long provided a mechanism for courts to remedy such unfairness when it occurs, and to place the additional burden caused by failure to serve on the party who caused it:

If any party fails to serve on or deliver a copy of any pleading, plea, motion, or other applications to the court for an order in accordance with Rules 21 and 21a, the court may, in its discretion, after notice and hearing, impose an appropriate sanction available under Rule 215-2b [now Rule 215.2(b)].

TEX. R. CIV. P. 21b.

8. As a result of petitioners' failure to serve Harrison, respondents' counsel travelled from Houston to Beaumont on **June 8, 2011**, for a hearing that could not take place. This required five hours of counsel's time at \$325.00 per hour, costing respondents \$1,625.00 in unnecessary attorney's fees and \$88.00 in unnecessary travel costs. **Exhibit C.** Preparing this motion and the supporting

affidavit required another two hours of counsel's time and cost respondents an additional \$650.00.

9. The Court should exercise its discretion under TEX. R. CIV. P. 21b to place this **\$2,363.00** burden where it belongs—on petitioners and their counsel.

IV. CONCLUSION

10. Because petitioners failed to serve Harrison with notices of oral hearings to be held on **June 8, 2011**, respondents incurred unnecessary expenses of **\$2,363.00** to attend hearings that could not be held. The Court should exercise its discretion under TEX. R. CIV. P. 21b and TEX. R. CIV. P. 215.2(b) to place this unnecessary burden on petitioners, and order petitioners and their counsel to reimburse respondents for these expenses within 15 days of the date the Court signs its order.

V. PRAYER

11. For these reasons, respondents pray the Court to sanction petitioners and their counsel, John S. Morgan, pursuant to TEX. R. CIV. P. 21b and TEX. R. CIV. P. 215.2(b); order them to jointly and severally reimburse respondents **\$2,363.00** within 15 days of the date the Court signs its order; and grant such other and further relief, at law or in equity, as to which respondents shall show themselves justly entitled.

Respectfully submitted,

ESCAMILLA, PONECK & CRUZ, LLP

By: _____ /s/ Jeffrey L. Dorrell _____

Jeffrey L. Dorrell

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**ATTORNEYS FOR WWW.OPERATIONKLEINWATCH.BLOGSPOT.COM
and WWW.SAMTHEEAGLEUSA.BLOGSPOT.COM**

CERTIFICATE OF CONFERENCE

I hereby certify that, on June 16, 2011, I transmitted a copy of the foregoing motion to counsel for petitioners, John S. Morgan, and asked him to advise me if petitioners were opposed to the motion. As of the date this motion was filed, Mr. Morgan:

- _____ Advised me he was OPPOSED to the motion.
- _____ Advised me he was NOT OPPOSED to the motion.
- _____ Did not respond, and must be presumed to be OPPOSED.

/s/ Jeffrey L. Dorrell

JEFFREY L. DORRELL

CERTIFICATE OF SERVICE

I hereby certify that on 6-16, 2011, a true and correct copy of the foregoing was served in accordance with TEX. R. CIV. P. 21a to the following:

Mr. John S. Morgan
Harris, Duesler & Hatfield, L.L.P.
550 Fannin, Suite 650
Beaumont, Texas 77701
Telephone: 409-832-8382
Facsimile: 409-833-4240
ATTORNEYS FOR PETITIONERS

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ATTORNEYS FOR RESPONDENT GOOGLE, INC.

Mr. Michael N. Harrison
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ATTORNEY FOR RESPONDENT BRENT COON

/s/ Jeffrey L. Dorrell

JEFFREY L. DORRELL

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**NOTICE OF ORAL HEARING ON RESPONDENTS' MOTION FOR SANCTIONS
FOR FAILURE TO SERVE**

Please take notice that respondents' Motion to Disqualify John S. Morgan as Petitioners' Counsel has been filed contemporaneously herewith, and will be considered by the Court upon oral hearing at 8:30 AM on **June 29, 2011**, in the courtroom of the 172nd District Court of Jefferson County.

Respectfully submitted,

ESCAMILLA, PONECK & CRUZ, LLP

By: _____/s/ Jeffrey L. Dorrell_____

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 201 Stratford
 Houston, Texas 77006-3219
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ATTORNEY FOR RESPONDENT BRENT COON

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PRK Enterprises, Inc. v. Google, Inc.

Respondents' Motion for Sanctions for Failure to Serve Copies of Motions and Pleadings

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ORDER OF SANCTIONS

On _____, the Court considered respondents' motion for sanctions for failure to serve respondent Michael Neil Harrison with notice of hearings to be held on June 8, 2011. After an oral evidentiary hearing at which the Court considered the motion, the response, testimony, other evidence on file, and arguments of counsel, the Court ORDERS:

A. Conduct of Petitioners the Court Finds to Have Violated Rules

1. The conduct of petitioners and their counsel that warrants sanction is their (i) failure to serve respondent Michael Neil Harrison with notice of a June 8, 2011, hearing on petitioners' motion for default judgment against Harrison, a violation of TEX. R. CIV. P. 21 and 21a; (ii) failure to serve respondent Michael Neil Harrison with notice of a June 8, 2011, hearing on Harrison's motion to quash service of petitioners' second amended petition a violation of TEX. R. CIV. P. 21 and 21a; and (iii) falsely certifying to the Court pursuant to TEX. R. CIV. P. 21 that such notices had been served by both certified mail and "regular first class mail."

B. Basis for Sanctions Imposed

2. Because petitioners failed to serve respondent Michael Neil Harrison with notice of hearings which petitioners and their counsel served on the respondent blogs known as www.operationkleinwatch.blogspot.com and www.samtheeagleusa.blogspot.com, petitioners and their counsel are subject to sanction in accordance with TEX. R. CIV. P. 21b and 215.2(b).
3. Sanctions may be imposed to (i) secure compliance with the rules; (ii) deter other litigants from violating rules; (iii) punish parties that violate the rules; and (iv) promote settlements. *Cf. Schein v. American*

Restaurant Group, Inc., 852 S.W.2d 496, 497 (Tex. 1993). The payment of respondents' attorney's fees and expenses incurred or caused by the failure to serve would (i) compensate respondents for the expenses they were forced to incur; (ii) punish petitioners and their counsel for violating TEX. R. CIV. P. 21; (iii) deter other litigants from violating the rules; and (iv) promote a settlement of this case.

C. Sanctions Imposed

4. Petitioners and their counsel, John S. Morgan, shall each pay to counsel for respondents, Jeffrey L. Dorrell, one-half of respondents' attorney's fees and expenses totaling of **\$2,263.00**.
5. All amounts ordered to be paid hereunder are ordered to be paid in good funds delivered and payable to respondents' counsel Jeffrey L. Dorrell, 201 Stratford, Houston, Texas 77006, within 15 (FIFTEEN) days from the date this order is signed.
6. All other relief requested by any party relative hereto and not specifically granted herein is hereby specifically **DENIED**.

SIGNED the ____ day of _____, of 2011.

PRESIDING JUDGE

APPROVED AND ENTRY REQUESTED:

ESCAMILLA, PONECK & CRUZ, LLP

By: _____ /s/ Jeffrey L. Dorrell _____

Jeffrey L. Dorrell
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