

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA and)	
DR. RACHEL TUDOR,)	
)	
Plaintiffs,)	
)	
v.)	Case No. CIV-15-324-C
)	
SOUTHEASTERN OKLAHOMA)	
STATE UNIVERSITY and)	
THE REGIONAL UNIVERSITY)	
SYSTEM OF OKLAHOMA,)	
)	
Defendants.)	

ORDER

Defendants have issued a subpoena seeking deposition and production of documents pursuant to Fed. R. Civ. P. 30(b)(6) to Plaintiff United States of America. Plaintiff USA has filed a Motion to Quash the subpoena. After consideration of the arguments raised by the parties, the Court finds the subpoena must be quashed.

Plaintiff argues the subpoena seeks to depose its trial counsel. Defendants respond arguing that the notice requires Plaintiff to designate a witness and that witness does not have to be an attorney. On its face, Defendants’ argument has some merit. However, when measured against the topics to be addressed, Defendants’ position loses validity. To properly address the issues set forth in the subpoena, the witness would have to be either Plaintiff’s trial counsel or a person prepared by trial counsel for the deposition as the topics seek information held primarily by trial counsel. Under either scenario, to address the issues

noticed by Defendants would necessarily require the disclosure of material protected by the attorney-client and deliberative process privileges and/or the work product doctrine.

Defendants' topics also fail the proportionality test. As both parties have recognized in briefing, Fed. R. Civ. P. 26(b)(1) imposes a proportionality limitation on discovery. In pertinent part that rule states:

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

While there may be some information provided were the deposition permitted, when measured against the significant obstacles to obtaining that information through the noticed deposition, quashing the Notice is required. To permit the deposition would impose on both parties significant expense in preparing for and attending a deposition or depositions where the majority of questions would be challenged as privileged or otherwise protected. That process would almost assuredly lead to another round of briefs and an order of the Court. This process must be measured through the lens of Defendants' arguments about what they can learn through the deposition. Those arguments demonstrate only a small amount of relevant material may be obtained. It is also apparent that much of that information has been previously disclosed or is more practically obtained through other discovery. While Defendants are indeed entitled to discovery via document production and deposition

testimony, the testimony that could be obtained from the challenged subpoena fails the proportionality test.

Finally, the Court notes that topics 2 & 3 seek testimony on issues the Court has previously held premature. Recognizing this fact, Defendants agree to delay the deposition until after the close of discovery when Plaintiff has obtained from Defendants the information necessary to prepare its answer. Accordingly, the Court will quash the notice without prejudice as to these topics. The Court expects the parties to work together to ensure this issue is resolved via document production and/or deposition testimony prior to trial.

For the reasons set forth herein, Plaintiff United States' Opening Motion to Quash or, in the Alternative, for a Protective Order Regarding Defendants' Notice of Deposition Under Fed. R. Civ. P. 30(b)(6) (Dkt. No. 89) is GRANTED. Defendants' Notice of Deposition (Dkt. No. 78) and Amended Notice of Deposition (Dkt. No. 94) are quashed without prejudice as set forth herein.

IT IS SO ORDERED this 15th day of August, 2016.



ROBIN J. CAUTHRON
United States District Judge