

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT L. VAZZO,
DAVID H. PICKUP, SOLI DEO
GLORIA INTERNATIONAL, INC.
d/b/a NEW HEARTS OUTREACH
TAMPA BAY

Plaintiffs,

v.

Case No. 8:17-cv-2896-T-36AAS

CITY OF TAMPA and
SAL RUGGIERO,

Defendants,

_____ /

ORDER

The City of Tampa moves for a protective order from the plaintiffs' notice for a Rule 30(b)(6) deposition. (Doc. 125). The plaintiffs oppose the City's motion. (Doc. 128). The undersigned will address the City's objections to the plaintiff's request for a Rule 30(b)(6) deposition in turn.

1. **The Plaintiffs' Request for a Rule 30(b)(6) Deposition is Not Premature**

The City argues the plaintiffs prematurely requested a Rule 30(b)(6) deposition before the City produced documents responsive to the plaintiffs' written discovery requests. (Doc. 125, pp. 5–6). As a result, the City concludes the plaintiffs' request for a Rule 30(b)(6) motion is cumulative and duplicative. (*Id.* at 6).

The City moved for its protective order on September 26th. (*Id.*). The deadline

for the City to produce documents responsive to the plaintiffs' written discovery requests was October 1st. (Doc. 121, p. 2). And the deadline for the City to produce written responses to the plaintiffs' requests for admission, interrogatories, and requests for production was October 8th. (*Id.*). The plaintiffs' Rule 30(b)(6) deposition is scheduled for October 30th. (Doc. 125-2, p. 1).

As of the date of this order, the plaintiffs have not moved to compel documents or responses from the City. Therefore, a Rule 30(b)(6) deposition next week is not premature because the City produced documents and written responses to the plaintiffs' discovery requests and no issues about the City's production or responses have been brought to the court's attention.

2. Objection to Testimony About Topic 7

The plaintiffs wish to ask the City's Rule 30(b)(6) deponent about the following:

All communications and coordination, between Defendant and Equality Florida or any other advocacy group, regarding the Ordinance or any other effort to ban SOCE for minors.

(Doc. 125-2, p. 4). This topic is relevant to the plaintiffs' motion for preliminary injunction. However, consistent with previous discovery orders, the court will limit this topic to communications and coordination between the twenty custodians in the September 6th order and advocacy groups that occurred between October 1, 2016, and December 15, 2017. (Doc. 119, p. 3; Doc. 121, p. 2). The advocacy groups are, in turn, limited to Equality Florida, Southern Poverty Law Center, and the National Center for Lesbian Rights, consistent with search terms permitted in the September

6th order. (Doc. 119, p. 5).

So, the plaintiffs may ask the City's Rule 30(b)(6) deponent about the following:

All communications and coordination that occurred from October 1, 2016, to December 15, 2017, between the twenty custodians listed on page three of the court's September 6th discovery order (Doc. 119, p. 3) and Equality Florida, Southern Poverty Law Center, and the National Center for Lesbian Rights regarding the Ordinance or any other effort to ban SOCE for minors.

3. Objection to Testimony About Topic 9

The plaintiffs wish to ask the City's Rule 30(b)(6) deponent about the following:

Defendant's drafting, consideration, debate, enactment, interpretation, application, and enforcement of the Ordinance, including Defendant's internal and external communications regarding same.

(Doc. 125-2, p. 4). The person designated as a governmental entity's witness "must testify about information known or *reasonably available* to the organization." Fed. R. Civ. P. 30(b)(6) (emphasis added). The broad scope of the plaintiffs' ninth requested topic is not information reasonably available to the City or its Rule 30(b)(6) witness before the October 30th deposition the plaintiffs seek to prepare for the November 15th hearing on their motion for preliminary injunction. Consistent with previous discovery orders addressing discovery needed for the preliminary injunction hearing, the plaintiffs may ask the City's 30(b)(6) deponent about the following:

Defendant's drafting, consideration, debate, enactment, interpretation, application, and enforcement of the Ordinance, including internal and external communications by the twenty custodians listed on page three of the court's September 6th discovery order (Doc. 119, p. 3) that occurred between October 1, 2016, and December 15, 2017, regarding same.

4. Objection to Testimony About Topic 10

The plaintiffs wish to ask the City's Rule 30(b)(6) deponent about the following:

The factual matters disclosed in any declaration, affidavit, or request to take judicial notice filed by Defendant in opposition to Plaintiffs' Motion for Preliminary Injunction (Doc. 3).

(Doc. 125-2, p. 4). Discovery requests must be relevant and proportional to the needs of the case. Fed. R. Civ. P. 26(b)(1). The plaintiffs' tenth topic is disproportional to the needs of the upcoming November 15th hearing on the plaintiffs' motion for preliminary injunction. The scope of material requested in the plaintiffs' tenth topic is also not reasonably available to the City or its Rule 30(b)(6) witness. So, the plaintiffs may not ask about its tenth topic at the October 30th deposition of the City's Rule 30(b)(6) witness.

5. Objection to Testimony About Topic 11

The plaintiffs wish to ask the City's Rule 30(b)(6) deponent about the following:

Defendant's document production efforts and sources, for any document production pursuant to Rule 26(a)(1) or any written discovery requests, including without limitation—

- a. the physical or digital/electronic locations of the documents produced;
- b. the time period(s) covered by the documents produced;
- c. the search terms used to locate potentially responsive, electronically stored documents; and
- d. the document custodian(s) consulted for responsive documents or from whom the documents were obtained for production.

(Doc. 125-2, p. 4). "Discovery about discovery," or discovery requests aimed at

learning about the opposing parties' process in producing discovery, is permissible. *King v. Akima Global Servs., LLC*, 323 F.R.D. 403, 408 (S.D. Fla. 2017); *Bldg. Materials Corp. of Am. v. Henkel Corp.*, No. 6:15-CV-548-Orl-22GJK, 2016 WL 11164043, at *2 (M.D. Fla. Apr. 29, 2016); *In re Takata Airbag Prod. Liab. Litig.*, No. 15-02599-MD-MORENO, 2017 WL 8812734, at *5 (S.D. Fla. July 5, 2017), *adopted*, 2018 WL 1859338 (S.D. Fla. Feb. 6, 2018). Although discovery into an opposing parties' discovery process is permissible, the party responding to discovery can still assert relevant privileges. *See Henkel Corp.*, 2016 WL 11164043 at *3 (stating defendants can assert privileges associated with "discovery about discovery" request).

The plaintiffs' request into the City's process in responding to discovery requests is appropriate. As drafted, it is appropriately tailored to the City's process and does not broadly and inappropriately try to reach the City's counsel's process or communications. The plaintiffs may ask the City's Rule 30(b)(6) witness about the plaintiffs' eleventh topic, but the City may assert any relevant privileges.¹

6. Objection to Testimony About Topic 12

The plaintiffs wish to ask the City Rule 30(b)(6) witness about the following:

The extent to which Defendant regulates: (a) any other clinical practice methods besides SOCE counseling; (b) any other types of clients or services that mental health professionals are permitted to serve or offer, besides SOCE counseling or clients who seek SOCE counseling; (c) any other mental health professionals or professions, besides marriage and

¹ The Middle District has a specific procedure for parties invoking privilege during a deposition. Middle District Discovery (2015) at VI(2); *see also United States v. Noriega*, 917 F.2d 1543, 1550 (11th Cir. 1990) (outlining what the party asserting attorney-client privilege must establish).

family therapy or marriage and family therapists; or (d) any other professions, professionals or professional conduct, besides mental health professions, mental health professionals or SOCE counseling. Without limitation, this topic includes any other ordinances or regulations that Defendant has considered, enacted or enforced as to sub-topics (a)-(d).

(Doc. 125-2, pp. 4–5). Sections (a) through (c) seek information that is relevant and proportional. Therefore, the plaintiffs may ask the City’s Rule 30(b)(6) witness about sections (a) through (c).

Section (d), however, is overly broad and thus disproportional because “professions, professionals, or professional conduct” is so vague that it could reach a wide variety of industries and conduct beyond the permissible scope of discovery outlined in Rule 26(b)(1). In the “Definitions” section of their notice for a Rule 30(b)(6) deposition, the plaintiffs failed to define “profession.” As a result, section (d) is unclear on which occupations, or what kind of occupations, qualify as “professionals.” So, the plaintiffs may not ask the City’s Rule 30(b)(6) witness about the sub-topic listed in section (d) of the plaintiffs’ twelfth topic. Further, the last sentence is reworded in the following way: “Without limitation, this topic includes any other ordinance or regulations that Defendant has considered, enacted or enforced as to sub-topics (a)-(c).”

7. General Scope of the Plaintiffs’ Rule 30(b)(6) Deposition

Discovery requested for a preliminary injunction is evaluated against the purpose of the preliminary injunction: to preserve the status quo. *Citizens for Quality Ed. San Diego v. San Diego Unified Sch. Dist.*, No. 17-CV-1054-BAS-JMA, 2018 WL

1150836, at *2 (S.D. Cal. Mar. 5, 2018); *Disability Rights Council of Greater Wash. v. Wash. Metro. Area Transit Auth.*, 234 F.R.D. 4, 7 (D.D.C. 2006). Consistent with previous discovery orders and the needs of the parties in preparation for the November 13th hearing, any doubts about the scope of questioning of the City's 30(b)(6) witness must be resolved consistent with the court's prior limitations to the twenty custodians, thirty search terms, and the October 1, 2016, through December 15, 2017, timeframe listed in the September 6th and 13th orders.

For the reasons discussed in this order, the City's motion for protective order (Doc. 125) is **GRANTED-IN-PART** and **DENIED-IN-PART**.

ORDERED in Tampa, Florida on October 25, 2018.



AMANDA ARNOLD SANSONE
United States Magistrate Judge