

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

STACEY RAY, et al.,

Plaintiffs,

v.

Civil Action 2:18-cv-272

Judge Michael H. Watson

Magistrate Judge Chelsey M. Vascura

**DIRECTOR, OHIO DEPARTMENT
OF HEALTH, et al.,**

Defendants.

ORDER

This matter came before the Court for a telephonic discovery conference on July 26, 2019. This Order memorializes that conference.

At issue is whether the deposition of Rachel Belenker, in-house counsel Defendant Ohio Department of Health (“ODH”), should proceed as noticed. Defense counsel represented that Ms. Belenker “has been heavily involved in the strategy and planning sessions with outside counsel regarding this litigation” and further indicated that Defendants could provide an affidavit or declaration outlining Ms. Belenker’s participation in litigating this action.

In response, Plaintiffs’ counsel expressed that Plaintiffs would accept Defense counsel’s representations such that production of an affidavit or declaration from Ms. Belenker was not necessary. In view of Defense counsel’s representations concerning Ms. Belenker’s role in this litigation, Plaintiffs’ counsel agreed that the “Shelton Rule” articulated in *Shelton v. American Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir. 1986), and adopted by the United States Court of Appeals for the Sixth Circuit in *Nationwide Mut. Ins. Co. v. Home Ins. Co.*, 278 F.3d 621, 628 (6th

Cir. 2002), applied.

The parties agreed that both the parties and the Court will be in a better position to evaluate whether the *Shelton* Rule's three-part test is satisfied with respect to Ms. Belenker after the Rule 30(b)(6) deposition of Defendant ODH takes place. If, following the Rule 30(b)(6) deposition of Defendant ODH, the parties arrive at impasse regarding whether Ms. Belenker may be deposed, they may again reach out to the Court to schedule an informal discovery conference.

IT IS SO ORDERED.

/s/ Chelsey M. Vascura
CHELSEY M. VASCURA
UNITED STATES MAGISTRATE JUDGE