

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

**Chelsey Nelson Photography LLC
and Chelsey Nelson,**

Plaintiffs,

v.

**Louisville/Jefferson County Metro
Government; Louisville Metro
Human Relations Commission-
Enforcement; Louisville Metro
Human Relations Commission-
Advocacy; Verná Goatley,** in her
official capacity as Executive Director of
the Louisville Metro Human Relations
Commission-Enforcement; and **Marie
Dever, Kevin Delahanty, Charles
Lanier, Sr., Leslie Faust, William
Sutter, Ibrahim Syed, and Leonard
Thomas,** in their official capacities as
members of the Louisville Metro
Human Relations Commission-
Enforcement,

Defendants.

Case No. 3:19-cv-00851-BJB-CHL

**Plaintiffs' Motion for Extension of
Time to Complete Fact Discovery**

Plaintiffs Chelsey Nelson and Chelsey Nelson Photography LLC (collectively “Chelsey”) seek to extend the fact discovery deadline sixty days—from April 1, 2021 to May 31, 2021—because Louisville has not provided discovery central to Chelsey’s claims. Chelsey moved to compel Louisville to produce this information, but that motion is still pending. Pls.’ Mot. to Compel Discovery (“MtC”), ECF No. 63. So Chelsey needs more time for fact discovery to obtain and review this essential information and then conduct depositions.

Background

In November 2020, Chelsey served her first set of discovery requests on Louisville. Bryan D. Neihart’s Decl. in Supp. of Pls.’ Mot. to Compel (“MtC Decl.”) ¶ 3, ECF No. 63-1. Louisville asked for a thirty-day extension to respond, and Chelsey agreed. Ex. 1.¹

Then on January 12, 2021, the parties corresponded about scheduling depositions for Louisville’s witnesses. Ex. 2. Chelsey shared that the Rule 30(b)(6) witness topics would depend on “Louisville’s discovery responses.” *Id.* The next day, the parties held a telephone conference where Louisville alleged a burden in producing documents in response to Plaintiffs’ First Set of Requests for Production to Defendants (“RFPs”) 40-58. MtC Decl. ¶ 4. Chelsey then proposed narrowing the discovery requests to address Louisville’s concerns. *Id.* at ¶ 5; MtC Decl. Ex. 1.

Louisville eventually responded to those requests on January 25, 2021. MtC Decl. ¶¶ 7-8. Three days later, Chelsey sent Louisville a letter detailing seven areas of inadequate production and responses. MtC Decl. Ex. 5. Chelsey also asked to hold

¹ Documents labeled “Ex. __” refer to documents attached to Bryan D. Neihart’s Declaration in Support of Plaintiffs’ Motion for Extension of Time to Complete Fact Discovery (“MeT Decl.”). “MtC Ex. __” refers to previously filed documents attached to Bryan D. Neihart’s Declaration in Support of Plaintiffs’ Motion to Compel.

a meet and confer to discuss discovery “soon because [the] issues impact the upcoming depositions of defendant witnesses.” Ex. 3.

On February 2, 2021, the parties spoke and tried to resolve the dispute. MtC Decl. ¶ 10. The same day, Chelsey again offered to modify her discovery requests to address Louisville’s perceived burden. MtC Decl. Ex. 6. Chelsey asked that Louisville respond by February 5, 2021. *Id.*

On that deadline, Louisville sent Chelsey a letter outlining its responses to her letter and email. MtC Decl. Ex. 7. Louisville agreed to produce two case files involving sexual-orientation discrimination in response to RFPs 40-58. *Id.* at 2. Louisville also agreed to look for any unproduced “Annual reports or minutes.” *Id.* at 2-3. On that same day, Chelsey asked Louisville for its availability to participate in a telephonic conference to resolve the discovery disputes. Ex. 4. Chelsey also suggested that she would need to reschedule the depositions of Louisville’s witnesses until after the disputes had been resolved. *Id.*

Three days later, Chelsey contacted the Court to schedule the telephonic conference. Ex. 5. The parties selected the earliest available date (February 23, 2021) to hold the telephonic conference. *Id.*

On February 18, 2021, Chelsey sent yet another letter to Louisville to try to resolve the parties’ discovery disputes. MtC Ex. 8. The next day, the parties submitted their joint status report. Joint Status Report, ECF No. 61. There, Chelsey explained that she had “not yet taken any depositions” but planned to do so “after the discovery disputes have been resolved and Plaintiffs receive relevant documents responsive to their requests for production.” *Id.* at 2-3.

On February 22, 2021, Chelsey emailed Rule 30(b)(6) deposition notices to Louisville and noted that the deposition topics depended on resolving the parties’ pending discovery disputes. Ex. 6. The next day, the parties participated in a telephonic status conference with Judge Lindsay. Order, ECF No. 62. The parties

discussed their discovery disputes and attempts at conferral. *See id.* Chelsey raised the need to extend the fact discovery deadline given the outstanding requests and responses. *See id.*

On March 5, 2021, Chelsey moved to compel Louisville to produce certain documents and answer several interrogatories. *See MtC.* And on March 12, 2021, Chelsey again emailed Louisville revised 30(b)(6) notices and suggested that the topics and timing of the deposition depended on resolving the outstanding discovery disputes. Ex. 6. With the deadline for fact discovery quickly approaching though, Chelsey now seeks to extend that deadline slightly so that she can obtain the documents she requested in discovery and conduct depositions.

Certificate of Conferral

The parties' counsel made good faith efforts to agree on revising the scheduling order. Chelsey asks only to extend the fact discovery deadline sixty days.² Louisville does not oppose this extension so long as all other deadlines move back sixty days too. Louisville wants all fact discovery completed before expert disclosures. Chelsey objects to extending any other deadline because Louisville's incomplete discovery responses prompted the need to extend the fact discovery deadline. And no reason justifies extending the other deadlines because doing so would unnecessarily push back the dispositive motion deadline.

Argument

Chelsey satisfies the "good cause" standard for modifying the scheduling order's fact discovery deadline. Fed. R. Civ. P. 16(b)(4). The "overarching inquiry," *Dowling v. Cleveland Clinic Found.*, 593 F.3d 472, 478 (6th Cir. 2010), and "primary measure" of good cause "is the moving party's diligence in attempting to meet" the

² Chesley reserves the right to amend this proposed deadline depending on when and how her motion to compel and Louisville's protective order motion are resolved.

scheduling order's requirements, *Inge v. Rock Fin. Corp.*, 281 F.3d 613, 625 (6th Cir. 2002). Courts also consider “whether the opposing party will suffer prejudice” by the modification. *Leary v. Daeschner*, 349 F.3d 888, 906 (6th Cir. 2003). But prejudice “is not determinative by itself.” *Needler v. Coca-Cola Refreshments USA, Inc.*, 2015 WL 1346783, at *1 (W.D. Ky. Mar. 24, 2015).

I. Chelsey has diligently pursued the requested discovery.

Chelsey has diligently pursued the outstanding discovery by trying to resolve the disputes with Louisville through multiple discovery modifications, meet-and-confers, letters, and emails and by turning to this Court when those attempts failed.

Courts look at several factors to decide whether to allow more time for discovery. These include (1) how discovery affects the merits ruling; (2) the moving party's dilatoriness; (3) the adverse party's responsiveness to “prior discovery requests”; (4) “when the moving party learned of the issue that is the subject of discovery”; and (5) the duration of the discovery period. *Dowling*, 593 F.3d at 478. The factors “overlap[]” and boil down to “diligen[ce] in pursuing discovery.” *Id.* All five factors support extending the fact discovery deadline.

First, Chelsey's requested discovery is critical to her claims and to rebut Louisville's defenses, as she has explained. *See* MtC 2-3, 6-13, 19-21; Pls.' Resp. to Defs.' Mot. for Protective Order 2-4, ECF No. 65.

Second, Chelsey has been diligent—not dilatory—in pursuing the outstanding discovery requests. She met-and-conferred with Louisville about discovery several times, sent multiple follow up communications about discovery, and scheduled a telephonic conference with the Court immediately after it became apparent the parties could not agree on discovery. MtC Decl. ¶¶ 4, 10; MtC Decl. Ex. 5; Ex. 5. *See also McGraw-Hill Glob. Educ., LLC v. Jones*, 2015 WL 5074487, at *5 (W.D. Ky. Aug. 8, 2015) (finding diligence when moving party “attempted to resolve the

matter” and participated in multiple conferences). Chelsey also offered Louisville three modifications to her requests in response to Louisville’s concerns. *See* MtC Exs. 1, 8. After these efforts failed, Chelsey moved to compel. *See, e.g., Violett v. Dowden*, 2019 WL 1290885, at *2 (W.D. Ky. Mar. 20, 2019) (noting pending motions to compel production of documents supported diligence finding).

Third, Louisville still has not produced documents Louisville said it would—two sexual orientation discrimination case files that proceeded to a hearing or other reports or minutes. MeT Decl ¶ 10; MtC Ex. 7 at 2-3 (agreeing to produce them).

The fourth and fifth factors merge. Chelsey sent discovery to Louisville in November 2020, more than four months before the discovery deadline. MtC Decl. ¶ 3. And three days after receiving Louisville’s discovery responses, Chelsey sent Louisville a letter explaining why its responses were inadequate. MtC Ex. 5.

Despite Chelsey’s diligence, she cannot meet the current fact discovery deadline. For example, Chelsey cannot effectively depose Louisville’s witnesses until she receives the requested documents. *See, e.g., McGraw-Hill Glob. Educ., LLC*, 2019 WL 5074487, at *4 (finding desire to depose witness after receiving documents “reasonable”). So good cause exists to extend the fact discovery deadline.

II. Extending the fact discovery deadline does not prejudice Louisville.

Louisville does not suffer any prejudice from extending the fact discovery deadline. Even so, Chelsey need not prove the absence of prejudice—instead, “a court independently evaluat[es]” prejudice under the circumstances. *First Tech. Capital, Inc. v. BancTec, Inc.*, 2017 WL 2735516, at *2 (E.D. Ky. June 26, 2017).

As of this motion, Louisville has sent no supplemental discovery requests to Chelsey even though the current discovery cutoff is only two days away. MeT Decl. ¶ 11. Chelsey has often notified Louisville since January 2021 that deposing Louisville’s witnesses depended on the documents Louisville produced. *See, e.g.,*

Exs. 2-3, 6; Joint Status Report. Louisville therefore cannot be surprised that Chelsey seeks to extend fact discovery extension after Louisville failed to provide certain documents. And the legal issues are well-known—the parties and amici have already briefed them. *See, e.g.*, MtC 2-3 (referencing this briefing).

Given this lack of prejudice, extending just the fact discovery deadline makes the most sense. Doing this preserves the integrity of the other deadlines in the scheduling order (including the dispositive motion deadline). *See Century Indem. Co. v. Begley Co.*, 323 F.R.D. 237, 240 (E.D. Ky. 2018) (“A scheduling order maintains orderly proceedings and is not a frivolous piece of paper” (internal quotation marks omitted)). This will in turn allow this case to remain on its current timeline where it will most likely be resolved through dispositive motions.

Chelsey’s timeline proposal also addresses Louisville’s concern by closing fact discovery on May 31, 2021 before the end of expert discovery on June 10, 2021. Scheduling Order 2, ECF No. 57. As a result, Louisville still has time to prepare any experts based on any new fact discovery. Even more important, the only discovery currently outstanding is Louisville’s, not Chelsey’s—Louisville’s responses to Chelsey’s discovery (and later depositions of Louisville’s witnesses). *Cf., e.g., Brumback v. Wurth Baer Supply Co.*, 2019 WL 2814649, at *3 (W.D. Ky. July 2, 2019) (A party “may not submit a problem of its own making as good cause to modify the deadlines in the scheduling order.”). So Louisville can identify experts now, have them review all fact discovery provided by Chelsey, and still have them prepare reports based on information currently in Louisville’s possession.

Conclusion

For all these reasons, Chelsey requests that this Court modify the current scheduling order to extend the fact discovery deadline from April 1, 2021 to May 31, 2021 and maintain all other deadlines.

Respectfully submitted this 29th day of March, 2021.

By: s/ Bryan D. Neihart

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* Admission *Pro Hac Vice*

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2021, I electronically filed the foregoing document with the Clerk of Court and that the foregoing document will be served via the CM/ECF system on all counsel of record.

By: s/ Bryan D. Neihart

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** Admitted Pro Hac Vice*

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
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**Chelsey Nelson Photography LLC
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**Louisville/Jefferson County Metro
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Human Relations Commission-
Advocacy; Verná Goatley, in her
official capacity as Executive Director of
the Louisville Metro Human Relations
Commission-Enforcement; and Marie
Dever, Kevin Delahanty, Charles
Lanier, Sr., Leslie Faust, William
Sutter, Ibrahim Syed, and Leonard
Thomas, in their official capacities as
members of the Louisville Metro
Human Relations Commission-
Enforcement,**

Defendants.

Case No. 3:19-cv-00851-BJB-CHL

**Bryan D. Neihart's Declaration in
Support of Plaintiffs'
Motion for Extension of Time to
Complete Fact Discovery**

I, Bryan D. Neihart, declare as follows:

1. I am over the age of eighteen and competent to testify, and I make this declaration based on my personal knowledge.
2. I am one of the attorneys representing Plaintiffs Chelsey Nelson Photography LLC and Chelsey Nelson in this litigation.
3. To avoid making redundant declarations and filing duplicative documents, this Declaration incorporates by reference Bryan D. Neihart's Declaration in Support of Plaintiffs' Motion to Compel (ECF No. 63-1) paragraphs 3-5 and 7-13 and

the documents attached to that declaration (ECF Nos. 63-2, 63-4, 63-5, 63-6, 63-7, 63-8, and 63-9).

4. In addition, on December 18, 2020, Defendants' counsel emailed me requesting an extension of time to produce discovery responses. Attached as Exhibit 1 is a true and correct copy of that email and my response to that email.

5. On January 12, 2021, I sent an email to Defendants' counsel about scheduling depositions and Plaintiffs' proposed protective order. Attached as Exhibit 2 is a true and correct copy of that email and Defendants' counsel's responses.

6. On January 28, 2021, I sent an email to Defendants' counsel requesting a meet-and-confer on several discovery disputes. Attached as Exhibit 3 is a true and correct copy of that email and Defendants' responses.

7. On February 5, 2021, I sent an email to Defendants' counsel about scheduling a telephone conference to resolve outstanding discovery disputes. Attached as Exhibit 4 is a true and correct copy of that email and Defendants' responses.

8. On February 8, 2021, I sent an email to the Court to schedule a telephonic conference to resolve outstanding discovery disputes. Attached as Exhibit 5 is a true and correct copy of that email and responses from Defendants' counsel and Theresa Burch.

9. On February 22, 2021 and March 12, 2021, I sent emails to Defendants' noticing the Defendants' 30(b)(6) deposition. Attached as Exhibit 6 are true and correct copies of those emails.

10. As of the date of this Declaration, Defendants have not supplemented their discovery responses to Plaintiffs' first set of discovery requests.

11. As of the date of this Declaration, Defendants have not submitted any supplemental discovery requests to Plaintiffs asking for additional information.

Declaration Under Penalty of Perjury

I, Bryan D. Neihart, a citizen of the United States and a resident of the State of Arizona, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed this 29th day of March, 2021, at Scottsdale, Arizona.

s/ Bryan D. Neihart
Bryan D. Neihart

EXHIBIT 1

From: Bryan Neihart <BNeihart@adflegal.org>
Sent: Friday, December 18, 2020 11:05 AM
To: Casey Hinkle <chinkle@kaplanjohnsonlaw.com>; David Kaplan <dkaplan@kaplanjohnsonlaw.com>
Cc: Kate Anderson <kanderson@adflegal.org>; Jon Scruggs <jscruggs@adflegal.org>; Julie Peterson <JPeterson@adflegal.org>; Fowler, Jason D. <Jason.Fowler@louisvilleky.gov>; Carroll, John F. <John.Carroll2@louisvilleky.gov>; Kylie King <kking@kaplanjohnsonlaw.com>
Subject: RE: Chelsey Nelson v. Louisville Metro- Request for Extension

Good morning Casey and David,

Casey, yes Plaintiffs will consent to that extension. We would likewise agree to receive written responses and responsive documents on a rolling basis as they become available before January 25, 2021.

David, Plaintiffs are available for depositions during the week of February 15. As I previously mentioned, our goal is to line up Plaintiffs' deposition with depositions of at least Defendants' 30(b)(6) witness and the Commission's executive director to be more efficient and reduce costs associated with travel to Louisville. With that goal in mind, and given Defendants' new deadline to respond to discovery, the week of February 15 is the earliest available date. That also assumes the Defendant witnesses I mentioned are available during that week too. However, would Defendants be willing to conduct the depositions virtually? If so, that would likely provide for greater flexibility and expand the available dates for Plaintiffs' deposition. Thank you.

Best,

Bryan Neihart

From: Casey Hinkle <chinkle@kaplanjohnsonlaw.com>
Sent: Friday, December 18, 2020 8:06 AM
To: Bryan Neihart <BNeihart@adflegal.org>; David Kaplan <dkaplan@kaplanjohnsonlaw.com>
Cc: Kate Anderson <kanderson@adflegal.org>; Jon Scruggs <jscruggs@adflegal.org>; Julie Peterson <JPeterson@adflegal.org>; Fowler, Jason D. <Jason.Fowler@louisvilleky.gov>; Carroll, John F. <John.Carroll2@louisvilleky.gov>; Kylie King <kking@kaplanjohnsonlaw.com>
Subject: RE: Chelsey Nelson v. Louisville Metro- Request for Extension

Bryan – Good morning. We are diligently working to comply with the voluminous discovery requests propounded by Plaintiffs, but need more time to complete Defendants’ responses. The original deadline for our responses falls on Christmas Eve. Due to the volume of Defendants’ requests, the holidays, and a spate of recent TRO proceedings in other matters, we respectfully request a reciprocal 30-day extension of Defendants’ deadline to respond to Plaintiffs’ written discovery requests, up to and including January 25, 2021. Please let us know if Plaintiffs will consent to this extension.

Best regards,

Casey L. Hinkle
(502) 689-6739

EXHIBIT 2

Bryan Neihart

From: Bryan Neihart
Sent: Tuesday, January 12, 2021 3:58 PM
To: David Kaplan
Cc: Carroll, John F.; Kate Anderson; Hailey Vrdolyak; Jon Scruggs; Fowler, Jason D.; Kylie King; Casey Hinkle
Subject: RE: Chelsey Nelson v. Louisville Metro Proposed Protective Order

In that case, let's schedule the call for 4pm EST. We will call the conference line that Casey provided. Thank you.

From: David Kaplan <dkaplan@kaplanjohnsonlaw.com>
Sent: Tuesday, January 12, 2021 3:31 PM
To: Bryan Neihart <BNeihart@adflegal.org>
Cc: Carroll, John F. <John.Carroll2@louisvilleky.gov>; Kate Anderson <kanderson@adflegal.org>; Hailey Vrdolyak <hvrldolyak@adflegal.org>; Jon Scruggs <jscruggs@adflegal.org>; Fowler, Jason D. <Jason.Fowler@louisvilleky.gov>; Kylie King <kking@kaplanjohnsonlaw.com>; Casey Hinkle <chinkle@kaplanjohnsonlaw.com>
Subject: RE: Chelsey Nelson v. Louisville Metro Proposed Protective Order

EXTERNAL

Bryan, I need to set up a call for tomorrow. So please pick from anything except 2-3:30 p.m. EST.

David

From: Casey Hinkle <chinkle@kaplanjohnsonlaw.com>
Sent: Tuesday, January 12, 2021 4:28 PM
To: Bryan Neihart <BNeihart@adflegal.org>; David Kaplan <dkaplan@kaplanjohnsonlaw.com>; Kylie King <kking@kaplanjohnsonlaw.com>
Cc: Carroll, John F. <John.Carroll2@louisvilleky.gov>; Kate Anderson <kanderson@adflegal.org>; Hailey Vrdolyak <hvrldolyak@adflegal.org>; Jon Scruggs <jscruggs@adflegal.org>; Fowler, Jason D. <Jason.Fowler@louisvilleky.gov>
Subject: RE: Chelsey Nelson v. Louisville Metro Proposed Protective Order

Bryan – Thanks for the quick response. Tomorrow would work better for us. We are available any time except 2-2:30pm EST. Name your time. We can use our conference dial-in: [REDACTED]

Casey L. Hinkle
(502) 689-6739

From: Bryan Neihart <BNeihart@adflegal.org>
Sent: Tuesday, January 12, 2021 3:12 PM
To: Casey Hinkle <chinkle@kaplanjohnsonlaw.com>; David Kaplan <dkaplan@kaplanjohnsonlaw.com>; Kylie King <kking@kaplanjohnsonlaw.com>
Cc: Carroll, John F. <John.Carroll2@louisvilleky.gov>; Kate Anderson <kanderson@adflegal.org>; Hailey Vrdolyak <hvrldolyak@adflegal.org>; Jon Scruggs <jscruggs@adflegal.org>; Fowler, Jason D. <Jason.Fowler@louisvilleky.gov>
Subject: RE: Chelsey Nelson v. Louisville Metro Proposed Protective Order

Hi Casey,

Thank you for confirming those dates for Ms. Goatley and Mr. Boyd and for reserving the extra day if needed.

We can schedule a call to review the 30(b)(6) topics and the protective order. As to the 30(b)(6) topics, it will likely be difficult to be more specific or give more detail on the topics until after we receive Louisville's discovery responses. But, we can nonetheless confer about the topics to discuss your questions.

As to the protective order, we plan to designate the following documents as confidential: (1) the portions of Plaintiffs' contracts, questionnaires, and other business documents that contain their clients' contact information; (2) documents that discuss Plaintiffs' client workflow process; (3) Plaintiffs' revenue records; and (4) interrogatory responses and documents that contain contact information related to Plaintiffs' spouse, friends, family, and current, former, and prospective clients. Documents within these categories are either trade secrets, confidential commercial information, and/or confidentiality is necessary to protect the privacy of Chelsey Nelson and non-parties (i.e., their contact information). We drafted the stipulated protective order to cover these topics and I do think they address specific discovery concerns. But we can discuss alternatives.

Because discovery is due January 19, we will need to file a motion for a protective order by Friday or otherwise come to a confidentiality agreement. For that reason, are you available to meet either tomorrow afternoon or anytime on Thursday?

Thanks again.

Bryan

EXHIBIT 3

From: [Bryan Neihart](#)
To: [Casey Hinkle](#)
Cc: [David Kaplan](#); [Fowler, Jason D.](#); [Carroll, John F.](#); [Jon Scruggs](#); [Kate Anderson](#); [Julie Peterson](#)
Subject: Re: CNP LLC v. Louisville/Jefferson County Metro Government: Discovery Meet and Confer
Date: Friday, January 29, 2021 12:18:08 PM
Attachments: [image001.png](#)

Thank you Casey. Tuesday at 2pm EST works for us too. We'll call the conference line you suggested. Have a nice weekend.

Best,

Bryan Neihart

On Jan 29, 2021, at 9:37 AM, Casey Hinkle <chinkle@kaplanjohnsonlaw.com> wrote:

EXTERNAL

Bryan – Happy to meet-and-confer. I've checked schedules of our team and we'd like to propose Tuesday at 2pm EST. Will that work for you? We can use my conference line:



Casey L. Hinkle
(502) 689-6739

From: Bryan Neihart <BNeihart@adflegal.org>
Sent: Thursday, January 28, 2021 7:03 PM
To: Casey Hinkle <chinkle@kaplanjohnsonlaw.com>; David Kaplan <dkaplan@kaplanjohnsonlaw.com>; Fowler, Jason D. <Jason.Fowler@louisvilleky.gov>; Carroll, John F. <John.Carroll2@louisvilleky.gov>
Cc: Jon Scruggs <jscruggs@adflegal.org>; Kate Anderson <kanderson@adflegal.org>; Julie Peterson <JPeterson@adflegal.org>
Subject: CNP LLC v. Louisville/Jefferson County Metro Government: Discovery Meet and Confer

[External email]

Hi Casey,

We would like to schedule a meet and confer with you early next week to discuss several discovery matters. We would like to have this meeting soon because issues impact the upcoming depositions of defendant witnesses. In an effort to get the ball rolling, and hopefully to make our meeting more efficient, I've attached a letter outlining Plaintiffs' requests for supplemental documents and/or responses.

I will be out of the office tomorrow. However, are you available on Monday, February 1 or Tuesday, February 2? We're available between 11am ET and 2pm ET on Monday and most of the day on Tuesday.

Thank you.

Best,

Bryan Neihart

<image001.png>

Bryan Neihart
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ADFlegal.org

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EXHIBIT 4

Bryan Neihart

From: Casey Hinkle <chinkle@kaplanjohnsonlaw.com>
Sent: Monday, February 8, 2021 7:29 AM
To: Bryan Neihart; Carroll, John F.; Fowler, Jason D.; David Kaplan
Cc: Jon Scruggs; Kate Anderson; Hailey Vrdolyak; Julie Peterson
Subject: RE: Chelsey Nelson Photography LLC v. Louisville/Jefferson County: Meet and Confer Follow Up

EXTERNAL

Bryan – I have a lot of availability this week, so no need to suggest specific dates/times. Just copy us when you contact Judge Lindsay and we'll reply to confirm once we see when the Judge is available.

Thanks,

Casey L. Hinkle
(502) 689-6739

From: Bryan Neihart <BNeihart@adflegal.org>
Sent: Friday, February 5, 2021 6:35 PM
To: Casey Hinkle <chinkle@kaplanjohnsonlaw.com>; Carroll, John F. <John.Carroll2@louisvilleky.gov>; Fowler, Jason D. <Jason.Fowler@louisvilleky.gov>; David Kaplan <dkaplan@kaplanjohnsonlaw.com>
Cc: Jon Scruggs <jscruggs@adflegal.org>; Kate Anderson <kanderson@adflegal.org>; Hailey Vrdolyak <hvrldolyak@adflegal.org>; Julie Peterson <JPeterson@adflegal.org>
Subject: RE: Chelsey Nelson Photography LLC v. Louisville/Jefferson County: Meet and Confer Follow Up

Hi Casey,

In light of Defendants' positions outlined in your letter, and because we haven't been able to resolve the discovery disputes despite our meet-and-confers and written exchanges, we would like to schedule a telephonic conference with Judge Lindsay. Specifically, we would like him to resolve the following: First, the production of documents related to RFP Nos. 40-58. Second, the production of the Commission's spreadsheet that contains information responsive to RFP Nos. 1-39. (We appreciate your willingness to look for and produce other annual reports or minutes responsive to these RFPs). And third, Defendants' incomplete responses to Interrogatory Nos. 15-17. Could you please provide us with some dates and times next week that you'd be available to participate in the telephonic conference? Then we'll contact Judge Lindsay's case manager to schedule.

And because we have not received any documents responsive to RFP Nos. 40-58, we will need to reschedule the depositions of former Executive Director Boyd, Executive Director Goatley, and the 30(b)(6) witness until after Judge Lindsay has resolved the dispute and/or the documents have been produced. So could you also please provide us with some additional deposition dates in early March to schedule the depositions of these witnesses? Thank you.

Best,

Bryan Neihart

From: Casey Hinkle <chinkle@kaplanjohnsonlaw.com>
Sent: Friday, February 5, 2021 1:52 PM
To: Bryan Neihart <BNeihart@adflegal.org>; Carroll, John F. <John.Carroll2@louisvilleky.gov>; Fowler, Jason D. <Jason.Fowler@louisvilleky.gov>; David Kaplan <dkaplan@kaplanjohnsonlaw.com>

Cc: Jon Scruggs <jscruggs@adflegal.org>; Kate Anderson <kanderson@adflegal.org>; Hailey Vrdolyak <hvrldolyak@adflegal.org>

Subject: RE: Chelsey Nelson Photography LLC v. Louisville/Jefferson County: Meet and Confer Follow Up

EXTERNAL

Bryan – Please see attached.

Have a great weekend,

Casey L. Hinkle
(502) 689-6739

From: Bryan Neihart <BNeihart@adflegal.org>

Sent: Tuesday, February 2, 2021 11:35 PM

To: Casey Hinkle <chinkle@kaplanjohnsonlaw.com>; Carroll, John F. <John.Carroll2@louisvilleky.gov>; Fowler, Jason D. <Jason.Fowler@louisvilleky.gov>; David Kaplan <dkaplan@kaplanjohnsonlaw.com>

Cc: Jon Scruggs <jscruggs@adflegal.org>; Kate Anderson <kanderson@adflegal.org>; Hailey Vrdolyak <hvrldolyak@adflegal.org>

Subject: Chelsey Nelson Photography LLC v. Louisville/Jefferson County: Meet and Confer Follow Up

[External email]

Hi Casey,

I wanted to follow up with you on our meet-and-confer to confirm the main points we discussed and to offer a few proposals that account for some of the items we discussed.

1. Request for Production Numbers 40-58. I understand that you are speaking with your team about the possibility of producing publicly filed or publicly available documents for complaints of discrimination against public accommodations. I understand that you will follow up with us once your team has reached a conclusion about whether to produce those documents. Our position remains that Plaintiffs are requesting (1) all complaints the Commission has received alleging discrimination based on any characteristic in employment and housing and (2) all case files related to complaints made against public accommodations. Then, after we receive these documents, Plaintiffs could determine whether further documents related to employment and housing need to be produced. As to (1), we are willing to further limit this request to address Defendants' concerns about burden. Plaintiffs would be willing to limit (1) by either (a) limiting employment and housing discrimination complaints to the time period of 2010-present or (b) limiting employment and housing discrimination complaints to complaints where the following exceptions to employment and housing apply: 92.04(A), (D) and 92.07(A), (B). To address Defendants' confidentiality concerns, we'd also be willing to agree to some sort of protective order or discuss potential redactions of sensitive information.

2. Production Responses Numbers 1-39. Other than withholding the "spreadsheets used by HRC to track open and closed cases," it is my understanding that Defendants believe they have produced all available responsive records to these requests. It is also my understanding that Defendants will look for the annual reports that the Commission and its predecessors were required to submit to the State Commission under 92.08(B)(10)(d) and predecessor statutes and that Defendants will update broken links on its website for the Enforcement minutes between the years 2017-2020. However, as I mentioned in my January 28, 2021 letter, there are still several years' worth of data that has not been produced and some of RFPs do not have any responsive documents. For this reason, we request that you update RFP numbers 1-39 to state whether responsive documents exist, provide specific answers to RFP numbers 2-39, and supplement the responses with the responsive documents outlined in the letter. Plaintiffs' position is also that the spreadsheet that is currently being withheld should be produced, but I understand we disagree about that.

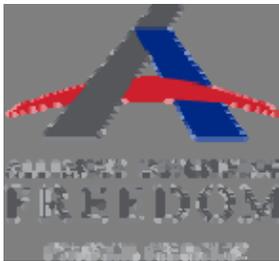
3. Interrogatory Response Numbers 15-17. We discussed Defendants' responses to these interrogatories. I understand that Defendants' position is that they have appropriately responded to these interrogatories. Plaintiffs position is that the responses do not fully and adequately address the question.

Please let us know your position on (1) producing publicly filed or publicly available documents for complaints of discrimination against public accommodations for RFPs 40-58; (2) Defendants' position on Plaintiffs' new proposals for RFPs 40-58; (3) providing Plaintiffs with the annual reports or other missing information outlined in the January 28, 2021 letter for RFPs 1-39; and (4) responding to RFPs 2-39 by Friday, February 5, 2021. If we are unable to resolve the issues listed in the paragraphs above, we'll need to schedule a telephonic meeting with Judge Lindsay.

Thank you.

Best,

Bryan Neihart



Bryan Neihart
Legal Counsel
+1 480 444 0020 (Office)
BNeihart@adflegal.org
ADFlegal.org

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EXHIBIT 5

Bryan Neihart

From: Theresa Burch <Theresa_Burch@kywd.uscourts.gov>
Sent: Tuesday, February 9, 2021 7:24 AM
To: Bryan Neihart; Casey Hinkle
Cc: Jon Scruggs; Kate Anderson; Hailey Vrdolyak; Julie Peterson; David Kaplan; Fowler, Jason D.; Carroll, John F.
Subject: RE: Request for discovery conference in Chelsey Nelson Photography LLC v. Louisville/Jefferson County, Case No. 3:19-cv-00851-BJB-CHL

EXTERNAL

An order will be entered scheduling a telephonic conference for February 23, 2021, at 3:00 p.m. Please call [REDACTED], access code [REDACTED].

Thank you.

Theresa L. Burch

Case Manager and Courtroom Deputy to
U.S. Magistrate Judge Colin H. Lindsay
U. S. District Court – Western District of Kentucky
601 W. Broadway
Louisville, Kentucky 40202
Phone: [REDACTED]

From: Bryan Neihart <BNeihart@adflegal.org>
Sent: Monday, February 8, 2021 6:24 PM
To: Casey Hinkle <chinkle@kaplanjohnsonlaw.com>; Theresa Burch <Theresa_Burch@kywd.uscourts.gov>
Cc: Jon Scruggs <jscruggs@adflegal.org>; Kate Anderson <kanderson@adflegal.org>; Hailey Vrdolyak <hvrldolyak@adflegal.org>; Julie Peterson <JPeterson@adflegal.org>; David Kaplan <dkaplan@kaplanjohnsonlaw.com>; Fowler, Jason D. <Jason.Fowler@louisvilleky.gov>; Carroll, John F. <John.Carroll2@louisvilleky.gov>
Subject: RE: Request for discovery conference in Chelsey Nelson Photography LLC v. Louisville/Jefferson County, Case No. 3:19-cv-00851-BJB-CHL

Dear Ms. Burch,

Plaintiffs' counsel is available on February 23 at 3:00pm.

As context, Plaintiffs claim that Defendants' Metro Amended Ordinance Number 193-2004 ("Ordinance"), § 92.05(A)-(B) violate their rights under the First Amendment, the Fourteenth Amendment, and Kentucky's Religious Freedom Restoration Act. The parties have three outstanding discovery disputes. I have attached the documents that are most relevant to the dispute: (1) Defendants' Responses to Plaintiffs' First Set of Requests for Production; (2) Defendants' Objections and Responses to Plaintiffs' First Set of Interrogatories; (3) Plaintiffs' January 28, 2021 letter; (4) Plaintiffs' February 2, 2021 email; and (5) Defendants' February 5, 2021 letter.

First, Plaintiffs' First Set of Requests for Production Numbers 40-58 request that Defendants produce case files (including complaints, reasonable cause determinations, settlement agreements, hearing transcript, and other documents) related to Defendants' past enforcement of the Ordinance in discrimination claims against employers, housing accommodations, and public accommodations. Plaintiffs later reduced these requests as detailed on pages 1-2 of the January 28, 2021 letter and the February 2, 2021 email. Defendants object to producing these documents based on relevance, undue burden, and confidentiality laws as detailed in the February 5, 2021 letter. Plaintiffs argue the requested documents are relevant, that retrieving the documents are not an undue burden, and that the confidentiality laws either do not apply or do not prevent disclosure.

Second, Plaintiffs' First Set of Request for Production Numbers 1-39 request that Defendants produce spreadsheets used to track cases filed under the Ordinance. Defendants object to producing this document based on confidentiality laws as detailed in their February 5, 2021 letter. Plaintiffs' position is that the confidentiality laws either do not apply or do not prevent disclosure of this document.

Third, Plaintiffs' requested that Defendants' supplemental their responses to Interrogatory Numbers 15-17. Plaintiffs' position is that Defendants' current responses are incomplete. Defendants' position is that they are complete.

Thank you.

Best,

Bryan Neihart

From: Casey Hinkle <chinkle@kaplanjohnsonlaw.com>

Sent: Monday, February 8, 2021 2:56 PM

To: Theresa Burch <Theresa_Burch@kywd.uscourts.gov>; Bryan Neihart <BNeihart@adflegal.org>

Cc: Jon Scruggs <jscruggs@adflegal.org>; Kate Anderson <kanderson@adflegal.org>; Hailey Vrdolyak <hvrldolyak@adflegal.org>; Julie Peterson <JPeterson@adflegal.org>; David Kaplan <dkaplan@kaplanjohnsonlaw.com>;

Fowler, Jason D. <Jason.Fowler@louisvilleky.gov>; Carroll, John F. <John.Carroll2@louisvilleky.gov>

Subject: RE: Request for discovery conference in Chelsey Nelson Photography LLC v. Louisville/Jefferson County, Case No. 3:19-cv-00851-BJB-CHL

EXTERNAL

Thank you – The only one of those dates/times that Defendants' counsel is unavailable is Feb. 26 at 10am. The other four options work.

Casey L. Hinkle
(502) 689-6739

From: Theresa Burch <Theresa_Burch@kywd.uscourts.gov>

Sent: Monday, February 8, 2021 4:51 PM

To: Bryan Neihart <BNeihart@adflegal.org>

Cc: Jon Scruggs <jscruggs@adflegal.org>; Kate Anderson <kanderson@adflegal.org>; Hailey Vrdolyak <hvrldolyak@adflegal.org>; Julie Peterson <JPeterson@adflegal.org>; Casey Hinkle <chinkle@kaplanjohnsonlaw.com>;

David Kaplan <dkaplan@kaplanjohnsonlaw.com>; Fowler, Jason D. <Jason.Fowler@louisvilleky.gov>; Carroll, John F. <John.Carroll2@louisvilleky.gov>

Subject: RE: Request for discovery conference in Chelsey Nelson Photography LLC v. Louisville/Jefferson County, Case No. 3:19-cv-00851-BJB-CHL

The following dates are available for a telephonic conference:

February 23 – 3:00 p.m.
February 25 – 2:00 p.m.
February 26 – 10:00 a.m.
March 5 – 11:00 a.m.
March 8 – 11:00 a.m.

Please provide a brief description of the dispute.

Thank you.

Theresa L. Burch

Case Manager and Courtroom Deputy to
U.S. Magistrate Judge Colin H. Lindsay
U. S. District Court – Western District of Kentucky
601 W. Broadway
Louisville, Kentucky 40202
Phone: [REDACTED]

From: Bryan Neihart <BNeihart@adflegal.org>
Sent: Monday, February 8, 2021 3:22 PM
To: Theresa Burch <Theresa_Burch@kywd.uscourts.gov>
Cc: Jon Scruggs <jscruggs@adflegal.org>; Kate Anderson <kanderson@adflegal.org>; Hailey Vrdolyak <hvrldolyak@adflegal.org>; Julie Peterson <JPeterson@adflegal.org>; Casey Hinkle <chinkle@kaplanjohnsonlaw.com>; David Kaplan <dkaplan@kaplanjohnsonlaw.com>; Fowler, Jason D. <Jason.Fowler@louisvilleky.gov>; Carroll, John F. <John.Carroll2@louisvilleky.gov>
Subject: Request for discovery conference in Chelsey Nelson Photography LLC v. Louisville/Jefferson County, Case No. 3:19-cv-00851-BJB-CHL

Dear Ms. Burch,

My name is Bryan Neihart and I represent the Plaintiffs in the above-referenced case. Despite multiple conferrals, the parties have been unable to resolve several discovery disputes. Plaintiffs would like to schedule a telephone conference with Judge Lindsay to attempt to resolve these disputes.

If it is helpful for scheduling purposes, counsel for Plaintiffs are available on Tuesday, February 9 after 3pm; Wednesday, February 10 after 2:30 pm; Thursday, February 11 between 10am-12pm and after 2pm; and Friday, February 12 after 2pm. All times are Eastern.

Please let me know if there are any materials that Judge Lindsay would like to review in advance of the conference. Thank you.

Best,

Bryan Neihart



Bryan Neihart
Legal Counsel
+1 480 444 0020 (Office)
BNeihart@adflegal.org
ADFlegal.org

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EXHIBIT 6

Bryan Neihart

From: Bryan Neihart
Sent: Friday, March 12, 2021 1:23 PM
To: Casey Hinkle; David Kaplan; Carroll, John F.; Fowler, Jason D.
Cc: Jon Scruggs; Julie Peterson; Kate Anderson; Hailey Vrdolyak
Subject: RE: CNPvLJC 30(b)(6) deposition notice
Attachments: 2021.03.12 CNPvLJC First Amended Notice of 30(b)(6) Deposition.pdf

Counsel,

I've attached Plaintiffs' first amended 30(b)(6) deposition notice. This notice includes the same topics as before, but the deposition date has been changed to Wednesday March 31, 2021. This accounts for the fact that the parties' discovery disputes haven't been resolved yet. As before, we reserve the right to amend the notice depending on Judge Lindsay's order.

In an effort to expeditiously resolve any disputes that might arise from the topics listed in the 30(b)(6), we would appreciate it if you could send us any objections to these topics soon. That way we can work on negotiating any of the disputed topics to potentially minimize any additional delay.

Thank you.

Best,

Bryan Neihart

From: Bryan Neihart
Sent: Monday, February 22, 2021 2:24 PM
To: Casey Hinkle <chinkle@kaplanjohnsonlaw.com>; David Kaplan <dkaplan@kaplanjohnsonlaw.com>; Carroll, John F. <John.Carroll2@louisvilleky.gov>; Fowler, Jason D. <Jason.Fowler@louisvilleky.gov>
Cc: Jon Scruggs <jscruggs@adflegal.org>; Julie Peterson <JPeterson@adflegal.org>; Kate Anderson <kanderson@adflegal.org>; Hailey Vrdolyak <hvrldolyak@adflegal.org>
Subject: CNPvLJC 30(b)(6) deposition notice

Counsel,

I've attached Plaintiffs' 30(b)(6) deposition notice. I know that you are still working on getting the schedules for deposition dates, but I have nonetheless noticed the 30(b)(6) deposition for March 16, 2021. We can adjust that date once you determine the witnesses' availability, but I wanted to include a date as part of the formal notice.

We also reserve the right to add or amend topics depending on Judge Lindsay's order regarding the discovery disputes and whether Plaintiffs receive additional documents or responses based on that order. Thank you.

Best,

Bryan Neihart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

**Chelsey Nelson Photography LLC
and Chelsey Nelson,**

Plaintiffs,

v.

**Louisville/Jefferson County Metro
Government; Louisville Metro
Human Relations Commission-
Enforcement; Louisville Metro
Human Relations Commission-
Advocacy; Verná Goatley, in her
official capacity as Executive Director of
the Louisville Metro Human Relations
Commission-Enforcement; and Marie
Dever, Kevin Delahanty, Charles
Lanier, Sr., Leslie Faust, William
Sutter, Ibrahim Syed, and Leonard
Thomas, in their official capacities as
members of the Louisville Metro
Human Relations Commission-
Enforcement,**

Defendants.

Case No. 3:19-cv-00851-BJB-CHL

**[Proposed] Order Granting
Plaintiffs' Motion for Extension of
Time to Complete Fact Discovery**

This matter is before the Court on Plaintiffs' Motion for Extension of Time to Complete Fact Discovery. The Court, having reviewed the motion and being otherwise sufficiently advised, orders as follows:

IT IS HEREBY ORDERED

1. Plaintiffs' Motion for Extension of Time to Complete Fact Discovery is GRANTED.
2. The parties shall complete all fact discovery no later than May 31, 2021.

3. All other deadlines in the Court's scheduling order (ECF No. 57) shall remain the same.