

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 to Clarify Expert
Deadlines**

Plaintiffs Chelsey Nelson Photography LLC and Chelsey Nelson (“Chelsey”) seek to clarify that the deadline for (1) disclosing rebuttal expert witnesses is July 26, 2021 and (2) moving to exclude expert witnesses is August 30, 2021. Chelsey conferred with Louisville. Louisville does not object to Chelsey disclosing her rebuttal expert on July 26, 2021. But Louisville asked to extend the deadlines for dispositive motions and motions to exclude expert witnesses to October 15, 2021. If Louisville files a motion to extend those deadlines, Chelsey will object.

The parties submitted their Joint Report of Parties’ Rule 26(f) Planning Meeting on September 21, 2020. Joint Report, ECF No. 54. Chelsey reserved the right to call a rebuttal expert if Louisville designated an expert. *Id.* ¶¶ 5(C), 5(C)(ii). On November 9, 2020, the Court issued the scheduling order. Scheduling Order, ECF No. 57. The Court scheduled deadlines for the parties’ experts. *Id.* at 2. But the scheduling order did not include a deadline for rebuttal experts. The Court also scheduled the deadline for dispositive motions and motions objecting to the admissibility of expert witnesses for the same day. *Id.*

On April 27, 2021, the Court modified the scheduling order. Order, ECF No. 75. The Court required Louisville to disclose their expert witness by June 30, 2021. *Id.* at 7. The Court set the parties’ dispositive motion deadline for August 30, 2021. *Id.* But the modified scheduling order did not include deadlines for rebuttal experts or motions to exclude expert witnesses.

On June 30, 2021, Louisville disclosed Netta Barak-Corren as its expert witness and produced her report. Because neither the scheduling order nor the order modifying the scheduling order specified the deadline for rebuttal expert disclosures, Chelsey is currently required to disclose her rebuttal expert by July 30, 2021. *See* Fed. R. Civ. P. 26(a)(2)(D)(ii) (providing “30 days after the other party’s disclosure” to produce rebuttal report “[a]bsent ... a court order”).

Nonetheless, well in advance of that deadline, Chelsey disclosed George Yancey, Ph.D. as her rebuttal expert on July 13, 2021. Chelsey intends to produce Dr. Yancey's report by July 26, 2021.

Because the current schedule does not contain specific due dates for rebuttal expert disclosures or motions to exclude experts, Chelsey respectfully moves this Court to clarify that (1) Plaintiffs' deadline for disclosing their rebuttal expert is July 26, 2021 and (2) that the parties' deadline for moving to exclude experts is August 30, 2021.

This request does not attempt to modify the scheduling order. Rule 26(a)(2)(D)(ii) currently controls the disclosure of rebuttal experts. Chelsey is asking for a deadline before the time allowed by the rule. And the original scheduling order had dispositive motions and motions to exclude experts due on the same day (as Chelsey requests here).

But even if this motion could be construed as a motion to modify the scheduling order (which it is not), Chelsey satisfies the "good cause" standard for the modification. *See* Pls.' Mot. for Ext. of Time to Complete Fact Discovery 3-6, ECF No. 70 (outlining good cause standard). Chelsey brings this motion about two weeks after Louisville disclosed its expert. And Louisville only confirmed that it would rely on an expert on June 30, 2021. So Chelsey could not have made this motion before then. Chelsey will disclose Dr. Yancey's report before expert discovery expires on August 9, 2021. Order at 7. Chelsey will disclose Dr. Yancey's report before rebuttal experts need to be disclosed under Federal Rule of Civil Procedure 26(a)(2)(D)(ii). And Chelsey does not seek to modify any other deadlines.

Therefore, Chelsey respectfully requests that this Court grant this motion.

Respectfully submitted this 16th day of July, 2021.

By: s/ Bryan D. Neihart

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CERTIFICATE OF SERVICE

I hereby certify that on July 16, 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.

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**[Proposed] Order Granting
Plaintiffs' Motion to Clarify Expert
Deadlines**

This matter is before the Court on Plaintiffs' Motion to Clarify Expert Deadlines. The Court, having reviewed the motion and being otherwise sufficiently advised, orders as follows:

IT IS HEREBY ORDERED

1. Plaintiffs' Motion to Clarify Expert Deadlines is GRANTED.
2. Plaintiffs shall serve their rebuttal expert witness disclosures on or before July 26, 2021.

3. All motions objecting to the admissibility of expert or rebuttal expert witness testimony shall be filed no later than August 30, 2021.

So ORDERED this ____ day of _____, 2021.

Judge Colin H. Lindsay
Magistrate Judge
United States District Court
Western District of Kentucky