

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

NICOLE MARIE MCDANIELS, individually
and on behalf of a class of others similarly
situated, *et al.*

Plaintiffs

- v -

1:04-CV-757
(GLS/RFT)

THE COUNTY OF SCHENECTADY, *et al.*,
Defendants

APPEARANCES:

ELMER ROBERT KEACH, III
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OF COUNSEL:

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WILLIAM J. GREAGAN, ESQ.

**RANDOLPH F. TREECE
U.S. MAGISTRATE JUDGE**

ORDER

Presently before this Court are several discovery disagreements. The parties have served and filed, respectively, letter-memoranda framing and discussing their relative positions on the

issues at hand. On February 9, 2005, a telephonic conference, on the record, was held. During the telephonic hearing, this Court made rulings, which are incorporated by reference into this Order. The Court will, nonetheless, summarize those rulings within this Order:

McDaniels' Deposition

The deposition of Nicole McDaniels shall occur on or before February 22, 2005 in Albany, New York. The Plaintiffs shall bear all expenses related to conducting this deposition, exclusive of attorney fees. In the event Ms. McDaniels is not deposed on or before February 22, 2005, the Defendants may file a motion for sanction without seeking further court approval.

Application for Rule 11 Sanctions

The Plaintiffs' application for permission to pursue a Rule 11 motion is DENIED.

Plaintiffs' Noticed Witnesses

The Plaintiffs has served notice to depose four rank and file employees of the Defendant County. These rank and file employees are represented by counsel provided by their union, Council 82. These four witnesses shall be deposed on or before March 15, 2005. The parties and Council 82 counsel should decide on an appropriate deposition schedule for these four witnesses.

Defendants' Noticed Witnesses

The Defendants have served subpoenas on eight to eleven witnesses to be deposed. It is possible that all eleven may not be deposed. At this juncture, the Court will not set a deadline to depose these witnesses. The Court will permit the parties an opportunity to agree upon a schedule to conduct these witnesses' depositions. If the parties cannot come to an agreement, they may seek further court intervention and a deadline will be set by the Court.

Class Certification

On January 10, 2005, this Court extended the date for serving and filing a motion to certify the class. Dkt. No. 25, Order, dated Jan. 10, 2005. Within that Order, the Court also directed the Defendants to disclose the misdemeanor booking sheets. *Id.* However, the Defendants have filed objections to the Court's ruling on this issue with the District Court. District Judge Gary L. Sharpe has set a return date on this appeal of June 23, 2005. Since the disclosure of the booking sheets are relevant to identifying the class, among other things, this Court will stay the filing of the motion for class certification for a date after the District Judge has ruled on the discovery appeal. The Plaintiffs shall notify this Court of the District Judge's ruling on the appeal. At that point and time, this Court will set a new date for the filing of the motion for class certification.

Plaintiffs' undisclosed witness

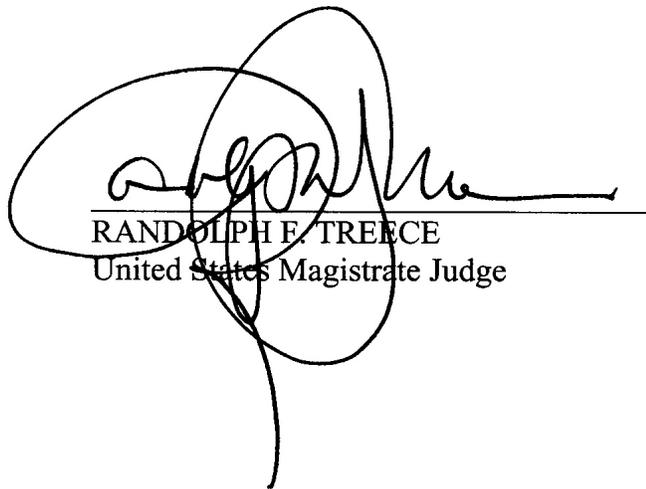
Plaintiffs' counsel identified a client of his who may have relevant information regarding this litigation. However, the lucidity of this relevance is now an issue for this Court to address. There are several vagaries regarding what she may know and how she may have gleaned this knowledge. Therefore, the Court directs Plaintiffs' counsel to advise this Court what information and how she came to acquire this information to determine if it is relevant to this case, said disclosure to be made on or before February 18, 2005. If this information requires disclosure of attorney-client privileged communication, the attorney can provide such information in an affidavit for an *in camera* review. If the client does not have a concern about her identity being disclosed to the Defendants, then counsel is directed to share such identification information with the Defendants on or before February 18, 2005.

Plaintiffs' Supplemental Responses to Defendants' Interrogatories

The identification of a witness is neither protected by the attorney-client privilege nor the work product doctrine. The request for the names and addresses of witnesses in Interrogatories number 3-9 shall be provided. FED. R. CIV. P. 26(a)(1)(A), 26(b); MOORE'S ON FEDERAL PRACTICE at ¶ 33.70; *Doe v. Mercy Health*, 1993 WL 377064, at *7; *Colorado v. Schmidt-Tiago*, 108 F.R.D. 731, 735. Further, the Plaintiffs shall identify the relevant documents requested in Interrogatories 3-9. The Plaintiffs shall supplement their answers in Interrogatories 5, 6, 7, 9 and 10, consistent with the Court's rulings. Supplemental responses, consistent with the Court's rulings and this Order, shall be served upon the Defendants on or before February 28, 2005.

SO ORDERED.

Albany, New York
February 9, 2005



RANDOLPH E. TREECE
United States Magistrate Judge