

UNITED STATES DISTRICT COURT  
DISTRICT OF IDAHO

JANET F. BELL, et al.,

Plaintiffs,

vs.

CITY OF BOISE, et al.,

Defendants.

Case No. CV 09-540-S-REB

**ORDER**

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Pending before the Court is Defendants' Motion for Protective Order, seeking to limit the scope of the deposition of AnaMarie Guiles (Dkt. 193). Plaintiffs have not yet responded to this Motion, but the deposition at issue is set for tomorrow, January 7, 2015, and so the Court is issuing this Order to provide counsel guidance in advance of the deposition. *The Court will entertain further briefing on the scope of appropriate questioning following the deposition, should either of the parties choose to further pursue the issue, because the Court recognizes that there has not been a full opportunity for an adversarial presentation to the Court because of the timing of the motion.*

**A. Standards of Law**

The Court may order the "discovery of any matter relevant to the subject matter involved in the action." Fed. R. Civ. P. 26(b)(1). Relevant evidence is any evidence tending to make the existence of any consequential fact "more probable or less probable

than it would be without the evidence.” Fed. R. Evid. 401. Although viewed in light of Rule 401, “the question of relevancy is to be more loosely construed at the discovery stage than at the trial . . . .” *See* 8 Wright, Miller, and Marcus, FEDERAL PRACTICE & PROCEDURE, § 2008 at p. 125 (2010). That the evidence might be inadmissible does not preclude discovery so long as the request “appears reasonably calculated to lead to the discovery of admissible evidence.” Fed. R. Civ. P. 26(b)(1). However, whether the Court orders information discoverable is subject to the balancing test of Rule 26(b)(2)(C), which requires courts to weigh the probative value of proposed discovery against its potential burden.

Federal Rule of Civil Procedure 30 sets forth the process for conducting depositions by oral examination. A party may depose the opposing party in a lawsuit without leave of the Court, except in circumstances not relevant here. Fed. R. Civ. P. 30(a)(1). During the deposition, counsel for the deponent may object to a question, but “the examination still proceeds; the testimony is taken subject to any objection . . . . A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3).” Fed. R. Civ. P. 30(c)(2).

Rule 30(d)(3) states that during the deposition, a party or deponent may move to terminate or limit the deposition “on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party.” Fed. R. Civ. P. 30(d)(3)(A). It also states that the Court may order that the deposition be terminated or limit its scope as provided in Rule 26(c).

## **B. Discussion**

Defendants correctly accept their burden of demonstrating specific harm sufficient to warrant a protective order. Def.'s Mem., p. 2 (Dkt. 193-1). Extending a deposition beyond the scope of questions that reasonably might lead to the discovery of admissible evidence can create an undue burden and expense.

Here, Plaintiffs agreed with respect to the City of Boise's 30(b)(6) deposition to exclude information relating to the City's programs and initiatives aimed at combating homelessness. *See* Dkt. 194-3, p. 3; Dkt. 194-4, p. 4. Accordingly, it is appropriate to apply these same agreed-upon limits—on exploring the City of Boise's efforts to combat homelessness—to the deposition of City of Boise employee AnaMarie Guiles.

However, with regard to the resources available to homeless individuals in Boise, the number of homeless people in Boise may be relevant to Plaintiffs's claim that the City's ordinance, and the manner in which Defendants' enforce that ordinance, is unconstitutional because it punishes homeless persons based on their homelessness status, allegedly in violation of the Eighth Amendment of the United States Constitution. Rev. 2nd Amd. Compl., p. 22. Therefore, Plaintiffs may depose Ms. Guiles about her knowledge of (1) the number of homeless persons in Boise; (2) whether that number includes homeless individuals coming into Boise from surrounding areas; and (3) the capacity for City and other resources to shelter homeless individuals. These topics may provide information reasonably calculated to lead to the

discovery of admissible evidence.<sup>1</sup> Additionally, the City's policy on neighborhood redevelopment may shed light on the manner in which the City has chosen to enforce ordinance at issue.

On the other hand, the following topics do not appear reasonably calculated to lead to the discovery of admissible evidence and are not appropriate areas of inquiry for the deposition: (1) the operation, management, and funding of the City of Boise's 300 units of housing available for low to moderate income Boiseans; and (2) the operation, management, and funding of the City of Boise's trust that administers home loans to low and moderate income Boiseans.

The Court is confident that Plaintiffs' counsel will appropriately limit their inquiries into these areas to the extent necessary to discover relevant information and will not go further to seek information to be used only to embarrass or harass Defendants, in violation of the discovery rules.

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<sup>1</sup> The Court has already determined that the Second Amended Complaint "properly updates information related to the Plaintiffs' standing to bring their claims, adds statistics on Boise's homeless population, and references reports and other information about actions taken with regard to the homeless and enforcement of the challenged Ordinances." Order, p. 11 (Dkt. 70). These proper revisions include allegations "related to Plaintiffs' health, homeless status, additional ordinance violation citations that they may have received, statistics regarding Boise's homeless population, the availability of shelter beds, and actions taken by the Boise Police Department and Boise City over the past four years regarding the Ordinances and the homeless population." *Id.* To the extent the deposition questions are focused on these areas, and reasonably calculated to lead to the discovery of admissible evidence, the questions are within the scope of the discovery rules.

**C. Order**

For the reasons set forth above, IT IS HEREBY ORDERED that the (Dkt. 193) is DENIED, in part and GRANTED in part, as set forth in more detail above.



DATED: **January 6, 2015**

A handwritten signature in black ink, appearing to read "Ronald E. Bush".

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Honorable Ronald E. Bush  
U. S. Magistrate Judge