HEARING DATE: March 2, 2016

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

JOHANNA HARRIS
Plaintiff

v.

JEFFREY DANA, in his capacity as City Solicitor of the City of Providence; JORGE O. ELORZA, in his capacity as Mayor of the City of Providence; and SAMUEL D. ZURIER, in his capacity as Chairman of the Committee on Claims and Pending Suits, Providence City Council; and JAMES J. LOMBARDI, III, in his capacity as Treasurer of the City of Providence
Defendants

C.A. No. PC-2015-3821

DEFENDANTS' MOTION TO QUASH AND MOTION FOR PROTECTIVE ORDER

Defendants hereby move to quash the subpoena served upon Serena Conley by Plaintiff, Johanna Harris. These Defendants also move this Court for a Protective Order as to Ms. Conley pursuant to Rules 45 and 26 of the Rules of Civil Procedure.

The subpoena should be quashed for several reasons. As an initial matter, Ms. Conley's involvement in this litigation and the facts upon which the litigation is based is wholly non-existent.[1] Simply put, Ms. Conley played no role whatsoever in the timeline of events that gave rise to Plaintiff's lawsuit. Ms. Conley, in her capacity as License Administrator for the City Licensing Board and Registrar for the City of Providence, sets up hearings regarding actions

[1] There is no mention of Ms. Conley's name in Plaintiff's Petition, in which she carefully details many interactions with various City officials.

taken against licensees. As to Plaintiff, Ms. Conley has never had a conversation with Plaintiff regarding her attempt to be reimbursed for legal fees.

There is no legitimate purpose in taking this deposition. Ms. Conley's total lack of involvement in the complained-of processes underlying this litigation renders her deposition completely unnecessary. The subpoena for Ms. Conley's deposition testimony is another in a long line of burdensome and harassing discovery tactics employed by Plaintiff.

There is ample case law to support the fact that Plaintiff has the burden to demonstrate that the discovery she seeks is not available through less intrusive discovery means and that the individual to be deposed has unique or superior knowledge regarding the subject matter. See Monti v. State, 151 Vt. 609, 611-13, 563 A.2d 629, 631 (1989); see also Abarca v. Merck & Co., 2009 WL 2390583 at *3 (E.D. Cal. Aug. 3, 2009) (noting that virtually every court that has addressed this issue has observed that such discovery creates a tremendous potential for abuse or harassment). As the Monti court reasoned, "[t]he federal courts have uniformly held that a highly-placed executive branch governmental official should not be called upon personally to give testimony by deposition, at least unless a clear showing is made that such a proceeding is essential to prevent prejudice or injustice to the party requesting it. 151 Vt. at 611-12, 563 A.2d at 631. Furthermore, the court pointed out that "[t]he few states that have had occasion to reach this question have adopted this standard as well. Id. "[P]ublic policy requires that the time and energies of public officials be conserved for the public's business to as great an extent as may be consistent with the ends of justice in particular cases." Id. (citing Community Fed. Sav. & Loan Ass'n v. Federal Home Loan Bank Bd., 96 F.R.D. 619, 621 (D.D.C. 1983)).

Indeed, the knowledge held by a deponent in such a scenario must be truly unique, and a deposition will not be allowed when the information could be had through less burdensome

discovery methods, such as interrogatories or deposition testimony of other persons. See, e.g., Community Federal Sav. & Loan Ass'n v. FHLB, 96 F.R.D. 619 (D.D.C. 1983). Specifically, the Monti court instructed that trial courts should weigh the necessity to depose or examine an executive official against, among other factors, the substantiality of the case in which the deposition is requested; the degree to which the witness has first-hand knowledge or direct involvement; the probable length of the deposition and the effect on government business if the official must attend the deposition; and whether less onerous discovery procedures provide the information sought. Id. (citations omitted). The court offered alternatives such as written interrogatories, deposition upon written questions, the designation of another representative to speak for the State on oral deposition, or seeking the information first from other sources. Id.

Once again, there is no legitimate purpose in taking this deposition. Plaintiff has not—and cannot—show that Ms. Conley possesses unique or superior knowledge regarding the subject matter of her case, particularly because the events complained of have nothing to do with Ms. Conley or Ms. Conley's official duties.

Furthermore, Plaintiff has not undertaken any less burdensome discovery methods; she has not propounded any interrogatories or requests for production in an effort to conduct discovery in her lawsuit, nor has she deposed any other individuals. Instead, she has moved straight to this clear harassing tactic; in fact, at the time of the filing of this Motion, Plaintiff had issued at least ten (10) subpoenas and notices of depositions for various individuals.

Subpoenaing Ms. Conley to testify at deposition without having met any of the above-described prerequisites is precisely the type of abuse contemplated by the many courts who have disallowed such depositions to go forward. See, e.g., Monti, 151 Vt. at 611-13, 563 A.2d at 631.

In sum, there is no evidence in the record to support the assertion that Ms. Conley had any involvement in the issues giving rise to the allegations contained in Plaintiff's Petition, or any involvement whatsoever in any relevant events predating the incurring of the complained-of legal expenses. Appearing for an unnecessary and unjustified deposition would result in great undue burden to Ms. Conley, and Plaintiff has not met her burden of demonstrating the required elements outlined above. There is no legitimate purpose in taking this deposition except to harass and annoy, and impose a time-consuming, burdensome, and disruptive discovery method when the circumstances do not justify it.

Finally, Plaintiff mistakenly believes that her mandamus action provides a valid basis for this discovery, when in fact this Court has previously examined the issue and found that she has an adequate remedy at law, which acts as a bar to the issuance of the writ of mandamus.[2] The action, if it is to survive, must proceed under the statutory framework set forth in R.I.G.L § 45-15-5.

To that end, the subpoena is fundamentally improper as it is directed to a non-party.

Therefore, Defendants respectfully submit that this Court should quash the subpoena served upon Ms. Conley and, further, this Court should impose a Protective Order to prevent further similar attempts by Plaintiff to sidestep proper procedure.

[2] At the January 26, 2016 hearing on Plaintiff's Motion for Judgment on the Pleadings, Judge Licht indicated that Plaintiff's mandamus action is not sustainable because she had an adequate remedy at law. See Hrg. Tr. Jan. 26, 2016 at 16:18-24 (denying Plaintiff's Motion for Judgment on the pleadings on the basis that there is an adequate remedy at law, specifically § 45-15-5).

DEFENDANTS,
By Their Attorney,

/s/ Dennis E. Carley

Dennis E. Carley (#3218)
ROBERTS, CARROLL, FELDSTEIN & PEIRCE, INC.
Ten Weybosset Street, 8th Floor
Providence, RI 02903
(401) 521-7000 FAX 401-521-1328
jshelton@rcfp.com

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Reviewer: Alexa Goneconte

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of February, 2016,

[X] I filed and served this document through the electronic filing system on the following parties:

Johanna Harris
PO Box 9483
Providence, RI 02940
johannaharris@cox.net

The document electronically served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

[ ] I served this document through the electronic filing system on the following parties:

The document electronically served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

[X] I caused this document to be [ ] mailed or [ ] hand-delivered to the attorney for the opposing party (and/or the opposing party if self-represented) whose name(s) and address(es) are as follows:

Johanna Harris
PO Box 9483
Providence, RI 02940

/s/ Nancy Diehl

DEC:JAS:ssk
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