

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

<p>DISTRICT OF COLUMBIA,</p> <p>Plaintiff,</p> <p>v.</p> <p>58th PRESIDENTIAL INAUGURAL COMMITTEE et al.,</p> <p>Defendants.</p>	<p>Civil Action No.: 2020 CA 000488 B Judge José M. López Next Event: N/A</p> <p>TELEPHONIC HEARING REQUESTED</p>
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**DISTRICT OF COLUMBIA’S OPPOSED MOTION FOR PROTECTIVE ORDER
RESERVING TIME FOR QUESTIONING DURING DEPOSITION**

Plaintiff District of Columbia (“District”), through its Office of the Attorney General, and without the consent of Defendants, respectfully moves this court, under SCR-Civil 26(c), to enter a protective order allowing the District to have at least 1.5 hours to question a third-party witness, Stephanie Winston Wolkoff, during a deposition set for December 9, 2020. The District has in good faith conferred with Defendants in an effort to resolve this dispute without court involvement, but the parties are unable to agree upon a division of time for questioning during Ms. Wolkoff’s deposition. The District therefore requests that this Court enter an order guaranteeing the District a fair opportunity to question Ms. Wolkoff.

1. This is a nonprofit enforcement matter brought by the Office of the Attorney General to address the waste of nonprofit funds by Defendant 58th Presidential Inaugural Committee (“PIC”). The District’s Complaint alleges that this waste included more than \$1 million in improper payments by PIC to Defendant Trump Hotel for event space during the week of the 2017 inauguration.

2. Stephanie Winston Wolkoff was a contractor and one of the key event planners for PIC during the 2017 inauguration period. She had concerns about the propriety of PIC holding events at the President-elect's own hotel and the excessive charges the Trump Hotel demanded for those events. She expressed these concerns to President-elect Trump, Ivanka Trump, and PIC's deputy chairman Rick Gates, among others. (Compl. ¶¶ 25, 28.) Ms. Wolkoff also contemporaneously documented her warning in an email to Gates and Ivanka Trump in December 2016 that the PIC was vastly overpaying for event space at the Trump Hotel. Ms. Wolkoff asked them to "please take into consideration that when this is audited it will become public knowledge that locations were also gifted and costs underwritten to lower rental fees."¹ The PIC and the Trump Hotel ignored these warnings and went ahead with the improper payments at issue in this case.

3. During its pre-suit investigation, the District served an investigative subpoena on Ms. Wolkoff.² In response to this subpoena, Ms. Wolkoff produced more than 18,950 pages of documents to the Office of Attorney General, all of which has been provided to Defendants by the District. In other words, Ms. Wolkoff has expended significant resources for a third-party in providing fulsome document discovery in this case, all of which Defendants have access to.

¹ Email from Stephanie Winston Wolkoff to Rick Gates (Dec. 17, 2016, 7:21:25 PM), District's Dep. Ex. 9, attached as Ex. 1. Although the Court recently entered a narrow Protective Order requested by Defendants, they have not formally designated any documents under that Protective Order as of the date of this filing. This document was publicly released by the Office of Attorney General on January 22, 2019 at the same time the District filed this enforcement case. *See* Press Release, *AG Racine Sues Presidential Inaugural Committee and Trump Entities for Abusing Nonprofit Funds to Enrich Trump Family*, Office of the Att'y Gen. for D.C. (Jan. 22, 2020), <https://oag.dc.gov/release/ag-racine-sues-presidential-inaugural-committee>.

² Ex. 2 – District's Subpoena to Stephanie Winston Wolkoff (July 20, 2019).

4. Ms. Wolkoff also authored a book detailing her experiences planning the 2017 Inauguration and working in the East Wing for First Lady Melania Trump.³ On October 13, 2020, the Trump Administration’s Department of Justice sued Ms. Wolkoff for allegedly violating a nondisclosure agreement by discussing her involvement with the 2017 Inaugural and working in the East Wing.⁴ As the Wall Street Journal reported in connection with the filing of this unusual lawsuit:

The Justice Department has brought lawsuits against former government employees when they published books that concerned national security or potentially contained classified information, including against former intelligence contractor Edward Snowden, but such lawsuits are unusual when no such sensitive information is at issue.

The lawsuit is one of several actions the Justice Department has taken in recent months involving damaging disclosures related to Mr. Trump.⁵ (emphasis added).

5. On October 26, 2020, Defendants Trump Organization, LLC (“Trump Organization”) and Trump Old Post Office, LLC d/b/a Trump International Hotel Washington, D.C. (“Trump Hotel”) (collectively, “Trump Defendants”) notified the parties of their intent to subpoena Stephanie Wolkoff for a deposition by oral examination, to take place on December 9, 2020. On November 12, 2020, Defendant 58th Presidential Inaugural Committee (“PIC”) notified the parties of its intent to subpoena Stephanie Wolkoff for a deposition by oral examination, to

³ Stephanie Winston Wolkoff, *Melania and Me: The Rise and Fall of My Friendship with the First Lady* (2020).

⁴ Steve Holland, *U.S. accuses author of Melania Trump tell-all book of breaking nondisclosure pact*, Reuters (Oct. 13, 2020, 3:51 PM), <https://uk.reuters.com/article/uk-usa-trump-melania-idUKKBN26Y2X8>.

⁵ Sadie Gurman and Aruna Viswanatha, *Justice Department Lawsuits Against Trump Critics Fuel Internal Dissent*, Wall Street Journal (October 15, 2020, 8:00 AM), <https://www.wsj.com/articles/justice-department-sues-melania-trumps-former-aide-over-tell-all-book-11602763200>.

take place on December 10, 2020. After objection from Ms. Wolkoff's counsel, PIC agreed that it would also depose Ms. Wolkoff on a single day: December 9, 2020.

6. SCR-Civil 30(d)(1) provides that "unless otherwise stipulated or ordered by the court, a deposition is limited to one day of 7 hours." SCR Civil 30(c)(1) further provides that "the examination and cross-examination of a deponent proceed as they would at trial under the provisions of Rule 43(c)."

7. The District has sought to obtain a guarantee from Defendants that the District could examine Ms. Wolkoff for 1.5 hours of the allotted 7 hours of deposition time under SCR-Civil 30(d)(1). Defendants have rejected this request.

8. On November 25, 2020, the parties met and conferred by videoconference to try and resolve the issue of the allocation of time among the parties during Ms. Wolkoff's deposition, but were unable to reach an agreement. Defendants' basic position as the District understands it is that Ms. Wolkoff was effectively the District's witness, that the District has access to her, and that the District's cross examination should not encroach upon Defendants' deposition time. Ms. Wolkoff is in fact a third-party, and the Rules and caselaw do not allow Defendants to cut off the District from examining Ms. Wolkoff at her deposition.

9. SCR-Civil 26(c)(1) provides that "the court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including . . . (B) specifying terms, including time and place . . . , for the disclosure or discovery." Ms. Wolkoff resides in New York and is not a party to this action, and is therefore entitled to greater consideration of the burdens placed on her by discovery requests by the parties. *See generally Nu Image, Inc. v. Does 1-23,322*, 799 F. Supp. 2d 34, 36–37 (D.D.C. 2011) ("The Court's broad discretion includes imposing reasonable limitations on discovery,

particularly where, as here, the Court has a duty to prevent undue burden, harassment, and expense of third parties.”).

10. SCR Civil 30(c)(1) provides that “the examination and cross-examination of a deponent proceed as they would at trial under the provisions of Rule 43(c).” “According to Rule 30(c)(1), ‘[t]he examination and cross-examination of a deponent proceed as they would at trial under the Federal Rules of Evidence.’ . . . Therefore, ‘[i]n a multi-party lawsuit, one party may notice the deposition and other parties may attend and cross-examine the deponent’” *Loop AI Labs Inc v. Gatti*, No. 15CV00798HSGDMR, 2015 WL 5522166, at *4 (N.D. Cal. Sept. 18, 2015) (citations omitted); *see also Melton v. Loftin*, No. 12-CV-0748-MJR-SCW, 2014 WL 1758981, at *2 (S.D. Ill. May 1, 2014) (“The scope of deposition testimony is guided by Rule 30(c), which provides that . . . ‘[t]he examination and cross-examination of a deponent proceed as they would at trial under the Federal Rules of Evidence . . .’” Fed. R. Civ. P. 30(c)(1). It is ludicrous to suppose Plaintiff would not be subject to cross-examination by each party during trial”); *Longino v. City of Cincinnati*, No. 1:12-CV-424, 2013 WL 831738, at *5 (S.D. Ohio Mar. 6, 2013) (“Rule 30 provides that a witness at a deposition is subject to both direct and cross-examination as such questioning would proceed at trial. Fed.R.Civ.P. 30(c)(1). This means that counsel for both parties of a civil action are permitted to question witnesses during depositions.”).⁶

⁶ “Federal cases interpreting a federal Rule of Civil Procedure are persuasive authority in this court's construction of [an] identical local Rule” *District of Columbia v. Jerry M.*, 717 A.2d 866, 869 n. 5 (D.C. 1998) (citing *Street v. Hedgepath*, 607 A.2d 1238, 1243 n. 5 (D.C.1992)).

11. Under SCR-Civil 30(c)(1), the District is entitled to question Ms. Wolkoff during her deposition just as it would at trial. Defendants cannot prohibit such questioning by allocations all 7 hours of Ms. Wolkoff's deposition to themselves.

12. The District's request for 1.5 hours of time during Ms. Wolkoff's deposition is eminently reasonable and minimizes the burden on Ms. Wolkoff. Accordingly, this Court should enter a protective order allowing the District at least 1.5 hours to question Ms. Wolkoff during her deposition.

13. The District requests that the Court set this matter for a telephone hearing on or before December 9, 2020, so that the deposition of Ms. Wolkoff can proceed as currently scheduled on that day.

Conclusion

For the foregoing reasons, the District requests that this Court issue a protective order requiring that the District shall have at least 1.5 hours to question Stephanie Winston Wolkoff during her deposition.

Dated: December 1, 2020

Respectfully submitted,

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Attorney General for the District of Columbia

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/s/ Jimmy R. Rock
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POINTS AND AUTHORITIES IN SUPPORT

1. SCR-Civil Rule 1 provides that the civil rules “should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.”
2. This Court may issue protective orders specifying the terms for discovery under SCR-Civil Rule 26.
3. The points and authorities cited herein and the record in this case.
4. The Court’s inherent power to control discovery.

RULE 12-I CERTIFICATION

Counsel for the District contacted counsel for Defendants to obtain consent to the relief requested in this motion. Defendants did not consent to the relief requested.

/s/ Matt James
MATT JAMES
Assistant Attorney General

RULE 26(h) AND 37(a) CERTIFICATION

The District’s Motion for Protective Order Reserving Time for Questioning During Deposition concerns Defendants’ failure to agree to allow the District to question Stephanie Winston Wolkoff for 1.5 hours during her deposition. Defendants Trump Organization LLC (“Trump Organization”) and Trump Old Post Office LLC d/b/a Trump International Hotel Washington DC (“Trump Hotel”) (collectively, “Trump Defendants”) have jointly agreed to depose Ms. Wolkoff on December 9, 2020.

The specific question propounded by this Motion is whether the District should be allowed to reserve 1.5 hours of Ms. Wolkoff’s deposition for its own questioning. The District contends that all parties are entitled to question a deponent, and Defendants cannot deprive the District of its opportunity to question a deponent by using up all of Ms. Wolkoff’s allotted 7 hour deposition time. Defendants contend essentially that Ms. Wolkoff is the District’s witness and the District has access to her, and that the District is not entitled to encroach upon their deposition time.

This impasse has crystallized over the course of several weeks, where the parties have engaged in repeated good faith attempts to resolve disputes relating to the timing of Ms. Wolkoff’s deposition. These attempts have included multiple emails and a telephonic meet-and-confer (conducted on November 25, 2020). However, the parties have ultimately reached a point where they cannot agree as to the allocation of Ms. Wolkoff’s deposition time.

/s/ Matt James
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MATT JAMES
Attorney for the District of Columbia

CERTIFICATE OF DISCOVERY

As of the date of the filing of this Motion, the following discovery has occurred in this case:

1. On September 15, 2020, the District served the following discovery:
 - a. Plaintiff District of Columbia's First Set of Requests for the Production of Documents to Defendant 58th Presidential Inaugural Committee;
 - b. Plaintiff District of Columbia's First Set of Requests for the Production of Documents to Defendant 58th Presidential Inaugural Committee; and
 - c. Plaintiff District of Columbia's First Set of Requests for the Production of Documents to Defendant Trump Old Post Office LLC d/b/a Trump International Hotel Washington D.C.
2. On October 5, 2020, the District served the following third-party discovery:
 - a. Subpoena for Documents to Thomas J. Barrack, Jr.;
 - b. Subpoena for Documents to Richard W. Gates, III.;
 - c. Subpoena for Documents to Ivanka Trump; and
 - d. Subpoena for Documents to Melania Trump.
3. On October 8, 2020, the District took the deposition of Ramsey Stewart.
4. On October 15, 2020, PIC served the following written responses:
 - a. Defendant 58th Presidential Inaugural Committee's Objections & Response to Plaintiff's First Request for Production.
5. On October 15, 2020, the District took the deposition of Sara Armstrong.
6. On October 19, 2020, the Trump Defendants served the following third-party discovery:
 - a. Subpoena for Documents to Accor Management US Inc.;
 - b. Subpoena for Documents to JW Marriott (Washington, D.C.);
 - c. Subpoena for Documents to the Ritz-Carlton (Washington, D.C.);
 - d. Subpoena for Documents to the St. Regis (Washington, D.C.); and
 - e. Subpoena for Documents to the W Hotel (Washington, D.C.)
7. On October 20, 2020, the Trump Defendants served the following third-party discovery:

- a. Subpoena for Documents to Mandarin Oriental Management (USA).
8. On October 20, 2020, the District took the deposition of Heather Martin.
9. On October 22, 2020, the Trump Organization served the following written responses:
 - a. Defendant Trump Organization LLC's Response to Plaintiff District of Columbia's First Set of Requests for the Production of Documents to Defendant Trump Organization LLC.
10. On October 22, 2020, the Trump Hotel served the following written responses:
 - a. Defendant Trump Old Post Office LLC's Response to Plaintiff District of Columbia's First Set of Requests for the Production of Documents to Defendant Trump Old Post Office LLC d/b/a Trump International Hotel Washington, D.C.
11. On October 22, 2020, the Trump Entities served the following third party discovery:
 - a. Subpoena for Documents to Four Seasons Hotels Limited; and
 - b. Subpoena for Documents to Hay Adams Holdings LLC.
12. On October 22, 2020, PIC served the following third party discovery:
 - a. Subpoena for Documents to The Willard Intercontinental (Washington, D.C.).
13. On October 22, 2020, the District took the deposition of Eric Danziger.
14. On October 26, 2020, the Trump Defendants served the following third-party discovery:
 - a. Subpoena for Documents to Stephanie Winston Wolkoff.
15. On October 28, 2020, the Trump Hotel served the following discovery:
 - a. Defendant Trump Old Post Office LLC's First Set of Interrogatories to the District of Columbia; and
 - b. Defendant Trump Old Post Office LLC's First Requests for Production of Documents to the District of Columbia.
16. On October 29th, 2020, PIC served the following third-party discovery:
 - a. Subpoena for Documents to DTRS Washington, LLC, d/b/a Four Seasons Hotel, Washington, DC.
17. On November 13, 2020, PIC served the following discovery requests:

- a. Defendant 58th Presidential Inaugural Committee's First Set of Interrogatories to the District of Columbia; and
 - b. Defendant 58th Presidential Inaugural Committee's First Requests for Production of Documents to the District of Columbia.
18. On November 12, 2020, PIC served the following third-party discovery:
- a. Subpoena for Documents to Stephanie Winston Wolkoff;
 - b. Subpoena for Documents to WIS Media; and
 - c. Subpoena for Documents to Tiny Horse, LLC.
19. On November 13, 2020, the District took the deposition of Patricia Tang.
20. On November 16, 2020, the District took the deposition of Mickael Damelincourt.
21. On November 17, 2020, the District took a deposition of Thomas Barrack, Jr.
22. On November 20, 2020, the District served the following third-party discovery:
- a. Subpoena for Documents to The Madison Hotel Washington DC, a Hilton Hotel.
23. On November 30, 2020, the District served the following written responses:
- a. District of Columbia's Response to Defendant Trump Old Post Office LLC's First Set of Interrogatories; and
 - b. District of Columbia's Response to Defendant Trump Old Post Office LLC's First Set of Requests for Production of Documents.
24. On December 1, 2020, the District took the deposition of Ivanka Trump.

CERTIFICATE OF SERVICE

I, Matt James, certify that on December 1, 2020, a copy of the foregoing District of Columbia's Opposed Motion for Scheduling Order was served electronically via CaseFileXpress to all counsel of record.

/s/ Matt James

MATT JAMES
Assistant Attorney General

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DISTRICT OF COLUMBIA,

Plaintiff,

v.

**58th PRESIDENTIAL INAUGURAL
COMMITTEE et al.,**

Defendants.

Civil Action No.: 2020 CA 000488 B

ORDER

This matter is before the Court on Plaintiff District of Columbia's ("District") [Opposed] Motion for Protective Order Reserving Deposition Time. Having considered that Motion, Defendants' opposition, and the entire record in this case, it is on this _____ day of _____, 2020 hereby:

ORDERED that the District's Motion is **GRANTED**. The District shall have at least 1.5 hours for its questioning during the deposition of Stephanie Wolkoff.

JUDGE JOSÉ M. LÓPEZ
Superior Court of the District of Columbia