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Attorneys for City and Library Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

MICHAEL E. SPREADBURY,

Plaintiff,

v.

BITTERROOT PUBLIC LIBRARY,
CITY OF HAMILTON, LEE
ENTERPRISES, INC., BOONE
KARLBERG P.C., DR. ROBERT
BROPHY, TRISTA SMITH, NANSU
RODDY, JERRY STEELE, STEVE
SNAVELY, STEVEN BRUNER-
MURPHY, RYAN OSTER,
KENNETH S. BELL, and JENNIFER
LINT,

Defendants.

Cause No. CV-11-064-M-DWM-JCL

**BOONE KARLBERG P.C.'S
BRIEF IN SUPPORT OF MOTION
FOR A PROTECTIVE ORDER**

INTRODUCTION

This supports the motion of Boone Karlberg P.C. (“Boone”) for a protective order concerning Plaintiff’s Interrogatories, Requests for Admission and Requests for Production served on Boone on November 21, 2011. A copy of the discovery requests is attached as Exhibit “A.” The Court should enter an order which protects Boone from answering the discovery and which precludes Plaintiff from serving further discovery directed at Boone, itself. The protective order is necessary to protect Boone from annoyance, oppression and undue burden or expense. Rule 26(c)(1), Fed. R. Civ. P.

BACKGROUND

On July 21, 2011, the U.S. Magistrate Judge issued Findings and Recommendations on Boone’s motion to dismiss Plaintiff’s claims against it. [Doc. 67.] The conclusion to the Findings and Recommendations reads, in part, “Based on the foregoing, it is recommended that . . . Boone’s motion to dismiss be granted. Spreadbury’s claims against Boone should be dismissed.” [Doc. 67, p. 23.] In part, the Findings and Recommendations addressed Plaintiff’s defamation claims against Boone. [Doc. 67, pp. 8-11.] The District Court adopted the Findings and Recommendations. [Doc. 107.]

On August 10, 2011, the U.S. Magistrate Judge entered an Order which denied Plaintiff’s request for leave to file a Second Amended Complaint except as

to two specific claims. In part, the Court denied Plaintiff's motion to amend the Complaint to add allegations of "public fraud" against Defendant Bitterroot Public Library and Boone. It also denied Plaintiff's motion to amend to add additional claims of alleged defamation against Boone. [Doc. 85, pp. 1, 6-10 and 13-14.] In summary, there are no additional claims against Boone in this action which remain for trial. [Docs. 67 and 85.]

On September 29, 2011, the Court awarded Defendant Bitterroot Public Library and the City of Hamilton their attorneys fees incurred in connection with two motions to compel Plaintiff to respond to discovery requests. In part, the Court rejected Plaintiff's argument that his indigence makes an award of fees unjust. [Doc. 112, pp. 7-8.]

On November 21, 2011, the Court entered its Text Orders denying Plaintiff's motion for sanctions against Boone. [Docs. 163 and 164.] In part, Plaintiff sought sanctions against Boone for using a social security number in Subpoenas issued to third parties. [Doc. 137, pp. 2-5.]

On November 17, 2011, the City and Library Defendants filed their motions for summary judgment on Plaintiff's claims against them. On November 22, 2011, Plaintiff served Interrogatories, Requests for Admission and Requests for Production on the Library and the City. Separately, Plaintiff also served Interrogatories, Requests for Admission and Requests for Production on Boone.

[Exh. "A."] Setting aside that there are no claims against Boone to be tried, Request for Admission No. 1 and Requests for Production Nos. 2 and 3 are directed to Plaintiff's "public fraud" claim which has been rejected by the Court. [Exh. A; Doc. 85, pp. 1, 6-10 and 13-14.] Further, Request for Production No. 2 is duplicative of Plaintiff's discovery requests served on the City and the Library. Next, Requests for Production Nos. 1 and 5, Request for Admission No. 2 and Interrogatories Nos. 6 and 7 are addressed to Plaintiff's defamation claims against Boone. Those claims were dismissed by the Court. [Doc. 67, pp. 8-11.] Interrogatory No. 2 is addressed to the Court's award of attorneys fees for Plaintiff's discovery conduct. [Doc. 112, pp. 7-8.] Finally, Interrogatories Nos. 1 and 2, and Requests for Admission Nos. 3 and 4 are addressed to the subject matter of Plaintiff's motion for sanctions, which motions were rejected by the Court. [Docs. 163 and 164.]

DISCUSSION

Rule 26(c)(1), Fed. R. Civ. P., reads, in pertinent part, as follows:

- (1) *In General.* A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending . . . 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 one or more of the following:
 - (A) forbidding the disclosure or discovery;
 - ...

As indicated above, the Court's Orders have dismissed and rejected Plaintiff's claims against Boone. Stated differently, there are no claims against Boone remaining for trial. Boone should not have to respond to Plaintiff's separate discovery requests served on it. An order should be issued protecting Boone from the annoyance, oppression and undue burden and expense of answering Plaintiff's discovery requests.

CONCLUSION

The motion of Boone for a protective order should be granted. It should be protected from answering Plaintiff's separate discovery requests served on it. Further, the Order should direct Plaintiff not to serve further discovery directed at Boone, itself.

DATED this 29th day of November, 2011.

/s/ William L. Crowley
William L. Crowley
BOONE KARLBERG P.C.
Attorneys for City and Library Defendants

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 7(d)(2)(E), Local Rules of the United States District Court, District of Montana, I hereby certify that the textual portion of the foregoing brief uses a proportionally spaced Times New Roman typeface of 14 point; is double spaced; and contains approximately 764 words, excluding the parts of the brief exempted by L.R. 7(d)(2)(E).

DATED this 29th day of November, 2011.

/s/ William L. Crowley
William L. Crowley
BOONE KARLBERG P.C.
Attorneys for City and Library Defendants

CERTIFICATE OF SERVICE

I hereby certify that, on the 29th day of November, 2011, a copy of the foregoing document was served on the following persons by the following means:

- 1 CM/ECF
- Hand Delivery
- 2 Mail
- Overnight Delivery Service
- Fax
- E-Mail

1. Clerk, U.S. District Court
2. Michael E. Spreadbury
700 South Fourth Street
Hamilton, MT 59840

/s/ William L. Crowley
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