

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

MICHAEL E. SPREADBURY,

CV 11-64-M-DWM-JCL

Plaintiff,

vs.

ORDER

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.

Presently before the Court is a Fed. R. Civ. P. 26(c) motion for a protective order filed by the law firm of Boone Karlberg, P.C. — a named defendant.¹ Boone Karlberg, P.C. asks the Court to enter an order of protection under Rule

¹Attorneys with the Boone Karlberg firm are the attorneys of record for Defendants City of Hamilton, Bitterroot Public Library and all individually named Defendants.

26(c)(1)(A) relieving it from having to respond to discovery requests served by Plaintiff Michael Spreadbury upon Boone Karlberg, P.C. as an entity.²

The procedural and factual background of this case are well known to the parties and need not be detailed here. For purposes of the present discussion it is necessary only to note that by Order entered September 27, 2011 (Dkt. 107), the Court granted Defendant Boone Karlberg, P.C.'s Fed. R. Civ. P. 12(b)(6) motion dismissing all claims advanced against that entity by Spreadbury.

The purpose of Rule 12(b)(6) is, of course, to “allow the court to eliminate actions that are fatally flawed in their legal premises and destined to fail” thereby dispensing with needless discovery and fact finding. *Advanced Cardiovascular Systems, Inc. v. Scimed Life Systems, Inc.*, 988 F.2d 1157, 1160 (Fed. Cir. 1993) (citing *Neitzke v. Williams*, 490 U.S. 319, 326-27 (1989)). Written interrogatories, requests for production, and requests for admission under Fed. R. Civ. P. 33, 34, and 36 respectively, may only be served on parties. Fed. R. Civ. P. 33, 34, and 36. *See also Hickman v. Taylor*, 329 U.S. 495, 504 (1947). Because all claims

²The prefatory language of the discovery requests at issue (Dkt. 174-1) is somewhat ambiguous as to whether the requests are directed to Boone Karlberg, P.C. as opposed to the Defendant City of Hamilton. Spreadbury, however, has confirmed in his brief in opposition to the motion that the requests are specifically directed to Boone Karlberg, P.C. Thus, the Court's ruling pertains solely to the propriety of the disputed requests as to Boone Karlberg, P.C.

advanced against Boone Karlberg, P.C. in this action have been dismissed, that entity is no longer considered a party subject to discovery by way of Fed. R. Civ. P. 33, 34, and 36. Consequently, Boone Karlberg, P.C. is entitled to protection under Fed. R. Civ. P. 26(c)(1)(A) from having to respond to the discovery requests served upon it by Spreadbury.

Therefore, IT IS HEREBY ORDERED that the motion for a protective order filed by Boone Karlberg, P.C. is GRANTED.

DATED this 6th day of December, 2011.

/s/ Jeremiah C. Lynch
Jeremiah C. Lynch
United States Magistrate Judge