

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

RYAN McFADYEN, et al.,)	
)	
Plaintiffs,)	
)	
v.)	1:07CV953
)	
DUKE UNIVERSITY, et al.,)	
)	
Defendants.)	

ORDER

This matter is before the Court on two Motions for Protective Orders [Doc. #249, #262] filed by Defendant Duke University. In the First Motion for Protective Order [Doc. #249], Defendant Duke University (“Defendant” or “Duke”) seeks a protective order concerning subpoenas issued by Plaintiffs to the public relations firm Edelman (“Edelman”) in the Northern District of Illinois, and the public relations firm Burson-Marsteller (“Burson-Marsteller”) in the Southern District of New York. In the Second Motion for Protective Order [Doc. #262], Defendant requests a protective order concerning Plaintiffs’ Rule 30(b)(6) Deposition Notice to Duke.

In considering these motions, the Court notes that it appears that the parties’ primary dispute on these discovery matters relates to the scope of discovery that is presently proceeding in this case. In that regard, pursuant to an Order [Doc. #218] dated June 9, 2011, discovery is proceeding only as to Counts 21 and 24 of Plaintiffs’ Amended Complaint. Discovery has been otherwise stayed as a result of a pending interlocutory appeal. The pending interlocutory appeal involves claims against other Defendants, including the City of Durham and its employees (“the

City Defendants”), as well as claims against Duke that are intertwined with the claims on appeal. In light of the interlocutory appeal, discovery was specifically stayed as to all of the claims on appeal, and the present discovery is limited to the “legally distinct” claims set out in Counts 21 and 24, which were not part of the interlocutory appeal. (See June 9, 2011 Order [Doc. #218]). Specifically, Count 21 is a claim for breach of contract “limited to the allegation that Duke imposed disciplinary measures against Plaintiffs, specifically suspension, without providing them the process that was promised,” and Count 24 is a claim against Duke and certain of its employees for fraud based on alleged “fraudulent misrepresentations in letters to Plaintiffs regarding Plaintiffs’ Duke Card information” on or about May 31, 2006. (Id.) Discovery must be limited to only those claims, as set out in the June 9, 2011 Order.

Under Federal Rule of Civil Procedure 26(b)(1), “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense.” Fed. R. Civ. P. 26(b)(1). However, discovery may be “otherwise limited by court order.” Fed. R. Civ. P. 26(b). In this case, discovery has been limited by the Court’s June 9, 2011 Order. That Order specifically provided that discovery could proceed only as to Counts 21 and 24. The Order further noted that discovery as to the other claims against Duke “could not realistically proceed independent of the claims on appeal,” and that to allow discovery to proceed as to the other claims against Duke “would indeed impose undue burdens on the City Defendants while their qualified immunity defense is still pending on appeal.”

Having reviewed the parties’ submissions, the Court concludes that Plaintiffs’ discovery requests include topics beyond the scope of discovery authorized by the Court’s June 9, 2011

Order.¹ Many of the disputed topics are overbroad and would include items that do not appear to be relevant to Counts 21 and 24, and would instead relate to the claims that have been stayed pending the interlocutory appeal. The Court's June 9, 2011 Order set out the basis for limiting discovery while the interlocutory appeal was pending. In these circumstances, a protective order may be necessary to keep discovery within the limits set out in the June 9, 2011 Order. See Shenoy v. Charlotte-Mecklenburg Hosp. Authority, No. 3:08CV125, 2011 WL 3564424 (W.D.N.C. Aug. 12, 2011) (granting motion for protective order concerning a Rule 30(b)(6) deposition, where the plaintiff had "failed to adequately heed the guidance" of the Court's prior orders limiting discovery to the issues relevant to the remaining claims); Static Control Components, Inc. v. Darkprint Imaging, 201 F.R.D. 431 (M.D.N.C. 2001) (noting that with respect to a subpoena issued under Rule 45 to a non-party in another district, a Rule 26(c) protective order could be used to "control the broad outline of discovery," and further noting that "[a] party's discovery rights in other districts cannot rise to higher than their level in the district of trial.>").

However, some of the information requested, or at least portions of that information, would be relevant to Count 21 and 24. Given that this dispute is primarily a matter of

¹ For example, the deposition notice includes inquiry into matters related to the "Rape Allegations," which is defined as "information relating to the allegations made by Crystal Mangum . . . including but not limited to, the medical examination of Crystal Mangum, any investigation of the allegations, any reaction to the allegations, and any disposition of the allegations, including the ultimate exoneration of the three members of the 2005-2006 Duke University Men's Lacrosse team who had been indicted in connection with Ms. Mangum's allegations." The deposition notice also includes inquiry into Duke's knowledge of the result of the DNA testing. Similarly, the subpoenas include broad requests, for example, for "all materials" relating to "Crystal Mangum's allegations that she was assaulted at 610 N. Buchanan Blvd. on or about March 13, 2006," as well as Duke University's "knowledge of the falsity" of Crystal Mangum's allegations, and "strategic assistance provided to Duke University by Burson-Marsteller with press inquiries, alumni, crisis management, and public statements from March 13, 2006 to the present," without any link to the claims for which discovery is proceeding.

overbreadth as to the various requests, the Court will direct the parties to meet and confer as to each of the disputed discovery matters, in light of the Court's guidance set out herein.² Within 14 days of the date of this Order, the parties should file a joint statement setting out the results of the meeting as to each of the specific discovery disputes that remain unresolved, that is, with respect to each topic or sub-topic included in the Rule 30(b)(6) Notice that remains unresolved and each subject listed in the third-party subpoenas that remains unresolved. The Court will schedule a hearing in this matter if necessary following that filing.

IT IS THEREFORE ORDERED that the parties must meet and confer with respect to the discovery disputes in the present Motions, in light of this Court's determination that pursuant to the June 9, 2011 Order limiting the scope of discovery, the parties must limit the scope of discovery to include only testimony and documents that are relevant to the specific claims asserted by Plaintiffs in Count 21 and 24.

IT IS FURTHER ORDERED that if any discovery disputes remain unresolved after that meeting, the parties must, within 14 days of this Order, file a joint statement setting out the results of the meeting as to each of the specific discovery disputes that remain unresolved, that is, with respect to each topic and sub-topic included in the Rule 30(b)(6) Notice that remains

² The Court notes that some of the disputes may also be resolved in light of the Court's entry of a Confidentiality Protective Order in this case, which may facilitate the flow of discovery.

unresolved and each subject listed in the third-party subpoenas that remains unresolved. The Court will schedule a hearing in this matter if necessary following that filing. Alternatively, if all matters have been resolved by the parties, the Court will terminate the pending motions as moot.

This, the 24th day of July, 2012.

/s/ Joi Elizabeth Peake
United States Magistrate Judge