

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

ALLSTATE INSURANCE COMPANY,

Plaintiff,

Case No. 3:15-cv-240

vs.

MELISSA PAPANEK, *et al.*,

Magistrate Judge Michael J. Newman

(Consent Case)

Defendants.

ORDER AND ENTRY: (1) DIRECTING THE CLERK OF COURTS TO PROMPTLY CORRECT THE DOCKET SHEET CONCERNING THE COUNSEL REPRESENTING MELISSA PAPANEK AND MICHAEL PAPANEK; (2) DENYING DEFENDANTS' MOTIONS TO COMPEL DISCOVERY (DOCS. 81, 85) WITHOUT PREJUDICE TO REFILE; (3) CLARIFYING THAT, IF SUCH MOTIONS ARE AGAIN SUBMITTED FOR THE COURT'S REVIEW, THEY SHALL BE FILED ON OR BEFORE NOVEMBER 1, 2017 AND BRIEFED ON AN EXPEDITED BASIS (7 DAYS TO FILE A MEMORANDUM IN OPPOSITION, AND 3 DAYS TO FILE A REPLY); (4) GRANTING THE PARTIES' ORAL MOTION TO EXTEND THE DISCOVERY DEADLINE, AND EXTENDING THAT DEADLINE TO DECEMBER 15, 2017; AND (5) CLARIFYING THAT USE OF INAPPROPRIATE LANGUAGE OR CONDUCT DURING THE DISCOVERY PROCESS WILL NOT BE TOLERATED AND, TO THAT END, REQUIRING ALL COUNSEL TO FILE AN AFFIDAVIT STATING THEIR CONFORMANCE WITH THE COURT'S *INTRODUCTORY STATEMENT ON CIVILITY*.

This civil consent case is before the Court for an informal telephone discovery conference on October 10, 2017 with regard to Defendants' pending motions to compel discovery. Docs. 81, 85. Attorneys Sarah Perez, Scott Humphrey, Kristine Argentine, Alfred Schneble, James Fleisher, and Christina Flanagan participated in the call.

During the conference call, counsel brought to the Court's attention that the docket sheet for this case is incorrect in part. Accordingly, the docket sheet shall be promptly **AMENDED** by the Clerk of Courts to reflect that Defendant Melissa Papanek is represented by attorneys James

P. Fleisher and Christina Michele Flanagan, not others; and Defendant Michael Papanek is represented solely by attorney Alfred William Schneble, III.

In both motions to compel, counsel represents the need to obtain deposition transcripts and file supplemental supporting memoranda. Because the motions to compel are incomplete and require supplementation, the Court **DENIES** those motions as **MOOT** at this time and directs Defendants to refile their motions -- should they choose to do so -- when appropriate (*i.e.*, following their receipt of the deposition transcripts needed to support the motions) but no later than **November 1, 2017**. Counsel for both sides shall meet and confer prior to the filing of any such motion. If such a motion is filed, Plaintiff shall file one or more memoranda in opposition within **7 days thereafter**, and Defendants may file one or more reply briefs within **3 days** of the filing of Plaintiff's memoranda in opposition.

With regard to the parties' oral request to extend discovery, the Court **GRANTS** such request for good cause shown and **ORDERS** that all discovery be completed on or before **December 15, 2017**. The discovery deadline means that all discovery must be concluded, as opposed to simply requested, by December 15th. Further, absent approval by the Court, there will be no continuation of discovery beyond the discovery deadline. If counsel or the parties extend discovery by agreement, there will be no supervision or intervention by the Court -- such as a Fed. R. Civ. P. 37 request for sanctions -- without a showing of extreme circumstances. Parties who undertake discovery beyond the discovery deadline do so at the risk the Court may not permit its completion before trial.

Finally, the parties have brought to the Court's attention the alleged use of a disparaging and offensive term during the discovery process; specifically, the use of the word "b_tch" by a party, present during a deposition, and directed at counsel taking the deposition of another. Such

conduct is unacceptable, and will not be tolerated by this Court. Depositions are an integral part of the Court's discovery process, and the same decorum and civility that exists before a federal judge in a federal courtroom extends to the discovery process. The Court is also greatly troubled by any conduct or language that is threatening to others, offensive to others, derogatory, or abusive. The fact that this utterance was allegedly made quietly and "under one's breath" is no excuse. As Federal Rule of Civil Procedure 30 makes clear, it is inappropriate for any person participating in or attending a deposition to engage in annoying, embarrassing, oppressive, or demeaning conduct, and all such conduct is prohibited. Should any such conduct occur in the future, the parties are entitled to seek to terminate the deposition and move for sanctions, including an award of fees and/or a finding of contempt. *See* Fed. R. Civ. P. 30(d). This federal judge is available and willing to entertain phone calls, during depositions or at other times, from counsel who believe such offensive conduct or utterances are occurring.

To that end, and recognizing the importance of civility in all proceedings, the Court **ORDERS** all counsel to this case to read the *Introductory Statement on Civility* found in the Southern District of Ohio's Local Rules, and to file an affidavit certifying that counsel and their clients shall comply with this civility provision hereafter. Counsel shall provide a copy of this Order and the *Introductory Statement on Civility* to their clients for review.

IT IS SO ORDERED.

Date: [Click here to enter a date.](#)

Michael J. Newman
United States Magistrate Judge