

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:18-cv-03204

LORI FRANK,

Plaintiff,

v.

CITY OF FORT COLLINS, a municipality; and
JEROME SCHIAGER, former Deputy Chief of Police, in his individual capacity,

Defendants.

PLAINTIFF'S RESPONSE TO DEFENDANT SCHIAGER'S MOTION (1) TO RETAIN
CONFIDENTIALITY OF CERTAIN DEPOSITION TESTIMONY PURSUANT TO THE
PROTECTIVE ORDER, AND (2) TO RESTRICT PUBLIC ACCESS TO THAT TESTIMONY

Ms. Frank responds to DEFENDANT SCHIAGER'S MOTION (1) TO RETAIN
CONFIDENTIALITY OF CERTAIN DEPOSITION TESTIMONY PURSUANT TO THE
PROTECTIVE ORDER, AND (2) TO RESTRICT PUBLIC ACCESS TO THAT TESTIMONY
as follows:

1. Judge Jackson's Practice Standards state:

I have no problem with whatever restrictions you wish to place on one another's treatment of such material. **However, I will presume that anything filed with the court is public information.** Restriction of public access is appropriate for such things as Social Security numbers, residential addresses and **true** trade secrets and may be appropriate for other categories such as criminal histories and medical information. If documents containing truly personal or trade secret information must be filed, then consider redacting that information. If it is critical that I see the information, then request a narrow order restricting public access and show good cause. Please certify in your motion that you have reviewed the Court's practice standards and have tailored your proposed order accordingly, and I will grant it. (Emphasis in original).

2. Here Defendant has not shown good cause to restrict any testimony from Yeager's deposition or to retain any confidentiality designation. None of the testimony is truly

personal or meets Judge Jackson's standards for any other purpose.

3. Defendants' arguments seeking to restrict the testimony is really related to the relevancy of the testimony, not its need to be restricted. Relevancy is not grounds for restriction.

4. Defendant concedes that the testimony relates to Mr. Schiager, who is a defendant in this case. Mr. Schiager's past conduct is highly relevant, even if Defendant disputes the evidence or its relevancy.

5. In addition, Defendants make the unsupported argument that "[i]f the confidentiality designation is removed from Mr. Yeager's testimony about these private and irrelevant investigations, we expect that Plaintiff will take the opportunity to spread this information and her comments about it to any one she wants to at the Police Department, where both she and Schiager are still employed."

6. Mr. Yeager's deposition took place on December 16, 2019.

7. What Defendants fail to inform the court is that Ms. Frank was present at Mr. Yeager's deposition and none of the testimony that Defendant seeks to have restricted at this time was marked as confidential **during** the deposition.

8. In fact, Defendant only informed the undersigned of the testimony being designated as confidential on January 27, 2020, just two days before filing Defendant's Motion for Summary Judgment. (Ex. 1.)

9. In addition, Defendant City of Fort Collins sent a similar email attempting to designate additional deposition testimony as confidential on January 29, 2020, the day before the City's Motion for Summary Judgment was filed. (Ex. 2.)

10. Obviously had Ms. Frank wanted to "spread this information and her comments about it to any one she wants to at the Police Department" she could have done so weeks ago

after she attended the December 16, 2019 deposition because none of the information had been designated as confidential during Mr. Yeager's deposition.

11. Finally, Judge Jackson's Practice Standards are very clear: "**However, I will presume that anything filed with the court is public information**" and "Please certify in your motion that you have reviewed the Court's practice standards and have tailored your proposed order accordingly, and I will grant it."

12. Defendant has not shown good cause to designate any of Mr. Yeager's deposition testimony as confidential nor has Defendant shown good cause to restrict public access to any of the deposition testimony. Moreover, Defendant has not certified in his Motion that that there has been any attempt to tailor the motion in accordance with the court's practice standards.

13. In their Motion, Defendant seeks to malign Plaintiff's character by implying she will spread rumors about Defendant Schiager without just cause while at the same time cherry picking the evidence it deems as not relevant and cloaking it under the auspices of being personal and restricting public access to preempt the public access of information in anticipation of the filing of Plaintiff's responses to the motions for summary judgment.

14. The true and unstated issue is that the City of Fort Collins has been under intense public scrutiny for its practices and conduct by the Police Department in terms of its treatment of women and seeks to limit that public scrutiny to the extent it can. In this case, by claiming that testimony showing unfavorable and discriminatory practices by Defendant Schiager or evidence that might support circumstances giving rise to an inference of discrimination, pretext or character evidence are personal and should be confidential and the public should be restricted from knowing about it.

15. In that regard, the Coloradan Newspaper printed an article on February 12, 2020

concerning a Police Departments police brutality case and stating that the settlement of that lawsuit was "the tip of the iceberg" in terms of Fort Collins police-related lawsuits." Link at: <https://www.coloradoan.com/story/news/2020/02/12/fort-collins-settles-police-brutality-lawsuit-off-duty-cop-chancellor-sparacio/4725694002/>

16. However, even this is not just cause to restrict public access to any of Yeager's testimony.

17. Accordingly, because Defendant has not shown good cause Plaintiff respectfully requests that the Court deny Defendant Schiager's Motion to Retain Confidentiality and Motion to Restrict public access to certain portions of Mr. Yeager's deposition testimony and remove the restriction pertaining to Yeager's testimony, (Doc. No. 84).

Respectfully submitted this 23rd day of February 2020.

ROBINSON & ASSOCIATES LAW OFFICE, LLC

s/Jennifer Robinson

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CERTIFICATE OF SERVICE

The undersigned certifies that on February 23, 2020 a true and correct copy of the foregoing was electronically served via email to the following:

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