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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal corporation; RAY CORPUZ and "JANE DOE" CORPUZ, husband and wife; PHILIP ARREOLA and "JANE DOE" ARREOLA, husband and wife; WILLIAM WOODARD and CATHERINE WOODARD, husband and wife; RAYMOND ROBERTS and "JANE DOE" ROBERTS, husband and wife; DAVID BRAME and "JANE DOE" BRAME, husband and wife; and JAMES HAIRSTON and "JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. 99-2-13911-4

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR A PROTECTIVE ORDER RE: REQUEST FOR ADMISSIONS AND DISCOVERY

FILED
IN COUNTY CLERK'S OFFICE

A.M. SEP 13 2001 P.M.

PIERCE COUNTY WASHINGTON
TED RUTT, COUNTY CLERK
BY _____ DEPUTY

NOTE FOR HEARING:
September 21, 2001

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SEP 14 2001

I. FACTS SUPPORTING ISSUANCE OF A PROTECTIVE ORDER.

Plaintiff has sued the City of Tacoma, and the individually-named defendants, for claims that arise out of his employment with the Tacoma Police Department. He alleges in his amended complaint, age discrimination,

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ORIGINAL

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1 retaliation for engaging in union activity and negligent hiring of the police chief,
 2 Philip Arreola. (See Plaintiff's Amended Complaint.)

3 Throughout this litigation, deponents have been asked questions
 4 regarding the City Manager, Ray E. Corpuz's involvement in an insurance fraud
 5 crime committed by his spouse. (Deposition excerpts of Michael Darland,
 6 Charles Meinema and William Woodard, attached hereto as Exhibit 1, 2 and 3.)
 7 And now the plaintiff has filed requests for admission regarding this issue.
 8 (Attached hereto as Exhibit 4.) Defendants hereby seek an order precluding
 9 the discovery sought by the Requests for Admission and interrogatories and
 10 ask that the plaintiff be precluded from inquiring about the issue further in
 11 depositions. The deposition of Ray Corpuz is currently scheduled for
 12 September 27, 2001. The defendants have attempted to resolve this issue
 13 without court intervention with no success. (See correspondence dated
 14 February 26, 2001, attached hereto as Exhibit 5.)

16 **II. THESE INCIDENTS ARE NOT RELEVANT, ADMISSIBLE NOR**
 17 **LIKELY TO LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE,**
 18 **AND A PROTECTIVE ORDER SHOULD BE ENTERED.**

19 A. Standard on Motion for Protective Order

20 The court enjoys broad discretion in controlling discovery. Doe v. Puget
 21 Sound Blood Ctr., 117 Wn.2d 772, 819 P.2d 371 (1991). A court may limit
 22 discovery "to protect a party or person from annoyance, embarrassment...."

23 CR 26(c).

1 It is the proper function of the trial court to exercise its discretion
 2 in the control of litigation before it. The trial court possesses
 3 broad discretion to manage discovery in a fashion that will
 4 implement full disclosure of *relevant* information and at the same
 time protect against harmful side effects. To that end, the court
 can issue protective orders regulating the extent and manner of
 discovery.

5 (Emphasis added; internal citations omitted.) Burnet v. Spokane Ambulance,
 6 131 Wn.2d 484, 505-06, 933 P.2d 1036 (1997). CR 26(c) allows the court, for
 7 good cause shown, to enter a protective order, limiting or prohibiting discovery
 8 in order to "protect a party of person from annoyance, embarrassment,
 9 oppression, or undue burden or expense[.]"
 10

11 The permissible scope of discovery in civil actions, as established by CR
 12 26(b), is subject to two basic limitations: privilege and relevancy. CR 26(b)(1).
 13 In the instant matter, as to the issues identified herein, privilege is not an issue
 14 – relevancy is.

15 CR 26 provides that a party "may obtain discovery regarding any matter,
 16 not privileged, which is relevant to the subject matter involved in the pending
 17 action, whether it relates to the *claim or defense* of the party seeking discovery
 18 or to the *claim or defense* of any other party[.] ... It is not grounds for objection
 19 that the information sought will be inadmissible at trial if the information sought
 20 *appears reasonably calculated to lead to the discovery of admissible evidence.*"
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22 (Emphasis added.) As evidenced by the plain language of the rule, the
 23 permissible scope of discovery - the "subject matter" - is necessarily
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1 established by the parties' claims and defenses. In the instant case, the issues
2 for which information is sought are not relevant to the subject matter of this
3 action.

4 B. This issue is beyond the scope of permissible discovery

5 This crime against Safeco insurance was investigated by Kitsap County
6 Sheriff's Office rather than the Tacoma Police Department because there was
7 an appearance of fairness issue, given who the suspects were. After a full
8 investigation, the Kitsap County Prosecutor declined to file charges against Ray
9 Corpuz and proceeded only against his spouse. (Attached hereto as Exhibit 6.)
10 The fact that Ray Corpuz is married to someone who was charged with a crime
11 has no bearing on *any* of the elements of the plaintiff's claims. There is no
12 nexus between a claim for age discrimination and an insurance fraud
13 investigation of the City Manager's spouse, there is no nexus between a claim
14 for retaliation based on union activity and an insurance fraud investigation of
15 the City Manager's spouse, and there is no nexus between the elements of a
16 cause of action for negligently hiring a police chief and an insurance fraud
17 investigation of the City Manager's spouse. Thus, it is clearly not relevant to
18 the subject matter involved in the pending action and should be precluded from
19 inquiry.
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22 It appears from the requests for admissions served on the defendants
23 that the plaintiff believes that Ray Corpuz was involved in the fraud, just not
24 prosecuted. This is simply absurd. The matter was investigated by an
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1 independent agency and a determination was made that Ray Corpuz was not
2 involved. This decision was not made by the City of Tacoma. Thus, if the
3 plaintiff is attempting to use Mr. Corpuz's alleged involvement in a crime for
4 which he was never charged, to impeach his credibility, he is taking a position
5 with no legal support. See ER 608 and comments thereto. See also, U.S. v.
6 Cox, 536 F.2d 65 (5th Cir. 1976); U.S. v. Alarado, 519 F.2d 1133 (5th Cir.
7 1975), cert. denied, 96 S.Ct. 1107, 424 U.S. 911, 47 L.Ed.2d 315 (1976); U.S.
8 v. Hodnett, 537 F.2d 828 (6th Cir. 1976) (**Effort to impeach witness on basis**
9 **of mere accusation or arrest is not permissible.**); U.S. v. Largent, 545 F.2d
10 1039 (6th Cir. 1976), cert. denied, 97 S.Ct. 1117, 429 U.S. 1098, 51 L.Ed.2d
11 546 (1977) (Evidence of prior misconduct is not admissible to prove character
12 of person.); Tafoya v. U.S., 386 F.2d 537 (10th Cir. 1967) (Only previous
13 convictions, and not previous acts of misconduct which do not result in
14 conviction may be used to impeach a witness' credibility.). Thus, it is apparent
15 the only reason the plaintiff has for seeking this information is to annoy and
16 harass the City Manager. This is the very type of information that is
17 contemplated for protection pursuant to CR 26(c).

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20 Based on the foregoing, the defendants respectfully request that the
21 court enter a protective order precluding the discovery sought on the issue of
22 alleged insurance fraud, both in the form of the requests for
23 admission/interrogatories and through the deposition process.
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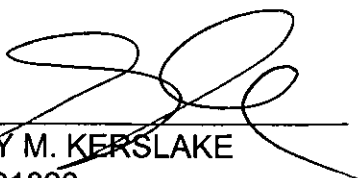
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REQUEST FOR ADMISSIONS - 5

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DATED this 13 day of September, 2001.

ROBIN S. JENKINSON, City Attorney
ELIZABETH A. PAULI, Ch. Asst. City Atty.

By:



SHELLEY M. KERSLAKE
WSBA# 21820
Attorney for Defendants

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MEMORANDUM IN SUPPORT OF DEFENDANTS'
MOTION FOR PROTECTIVE ORDER RE:
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