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February 28, 2022

VIA E-COURT FILING

The Honorable Marybeth Rogers
W.J. Brennan Courthouse
583 Newark Avenue, 2nd Floor
Jersey City, New Jersey 07306

Re: Stacie Percella v. City of Bayonne, et al.
Docket No.: HUD-L-00177-18

Dear Judge Rogers:

As Your Honor is aware, this firm represents the interests of non-party witnesses Allan C. Roth, Esq. and Ellen M. Horn, Esq. (“Mr. Roth” and “Mrs. Horn”), in connection with the above-referenced matter and submits this Reply to Plaintiff’s Opposition to our motion filed on February 10, 2022, joining the City of Bayonne’s Motion to Quash filed on February 2, 2022.

As an initial matter, Plaintiff repeats that non-party witnesses Mrs. Horn and Mr. Roth, among others, were mandated to submit to their depositions based upon Judge Turula’s December 17, 2021 Order and Supporting Statement of Reasons. See Plaintiff’s Exhibit A. This interpretation, however, is clearly inconsistent with the specific language of the Order, which does not mandate the depositions to take place, but rather that they must be scheduled within the prescribed time period given in the Order. Specifically, the Order states “the depositions... shall be scheduled within 20 days of this Order.” Id. Furthermore, Judge Turula stated in the Statement of Reasons that “the Court is mindful of the opposition that seeks entry of a protective order and quashing subpoenas, but...opposing counsel has to file the appropriate motions with the Court.” Id. As such, the appropriate motion was filed on February 2, 2022 by the City of Bayonne and subsequently, interested non-party witnesses Mrs. Horn and Mr. Roth followed suit on February 10, 2022 by joining the City’s motion.

Any contact that Mrs. Horn or Mr. Roth had with Plaintiff’s counsel regarding the scheduling of depositions was done so that they would be in compliance with the Court Order **compelling the scheduling of these depositions**. Mrs. Horn’s and Mr. Roth’s vigilance was to ensure that they complied with the Order, which has no bearing on whether these non-party

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witnesses are interested parties in this matter who maintain the right to join the City of Bayonne's Motion to Quash and object to appearing for said depositions. Moreover, nothing cited in Plaintiff's Oppositions filed on either February 10, 2022 or February 24, 2022 precludes Mrs. Horn or Mr. Roth from joining the City of Bayonne's Motion to Quash.

Of great import is Plaintiff's attempt to sway this Court with baseless, irrelevant, and incendiary allegations about Mrs. Horn and Mr. Roth, because Mrs. Horn served as the hearing officer and years later the two firms where each attorney originated, merged with one another becoming what is now known as Ruderman & Roth, LLC. At the time Mrs. Horn served as hearing officer at the local disciplinary hearing for the underlying substantive matter, there was no consideration of these two firms merging and no discussion or action was taken in this regard. The two firms merged in January 2019. Moreover, it is well-known and established that at the local hearing level, a municipality has the right to assign any individual to serve as a hearing officer. Further, it well-established under Civil Service law that an employee has the opportunity to appeal a decision from the local departmental hearing and in doing so, receives a trial de novo before the Office of Administrative Law. "The Commission is authorized to conduct investigations and hearings on appeals De novo." Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980), 410 A.2d 686, 690; See also N.J.S.A. 11:15-4. The Civil Service Commission has a duty to "seek diligently all the information and evidence bearing on the merits of the case." Id. Therefore, a trial De novo provides an opportunity for any defects to be cured and for the appellant to present an entirely new hearing, whereby any issues discovered at the below local hearing can be addressed and cured at the new trial. As such, if Plaintiff had an issue with the departmental hearing officer or a decision rendered therefrom, this was addressed during the De novo trial. Therefore, the Court must disregard these meritless accusations.

Plaintiff's assertion that Mr. Roth has some alleged "history" of being a "responsible actor" in civil rights and retaliation cases involving civil service public employees is nothing more than inflammatory rhetoric intended to mislead this Court. See Plaintiff's Opp. Br. Mr. Roth has served as special counsel to the City of Bayonne and in doing so has provided guidance pertaining to a myriad of labor and employment matters. Prior employment matters involving Mr. Roth are totally irrelevant and should be given no weight in this case.

Plaintiff's assertion that Mr. Roth and Mrs. Horn failed to file a Motion for Reconsideration as if that is the only available avenue is simply inaccurate. As previously argued, the proper motion was filed -- Motion to Quash-- as the non-party witnesses did not need to seek reconsideration of an Order which simply compelled the scheduling of depositions, not the taking of depositions. Accordingly, they joined the City's filing of its Motion to Quash.

Plaintiff's insinuation that Mrs. Horn and Mr. Roth are intending to delay the discovery process or disregard it altogether is without merit. As interested non-party witnesses, Mr. Roth and Mrs. Horn have joined the City's Motion to Quash based upon the foregoing argument, the below arguments, and the previously submitted briefs.

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LEGAL ARGUMENT

Mrs. Horn served as the hearing officer hired by the City of Bayonne for the local hearing adjudicating Plaintiff's disciplinary charges. See Sullivan Cert., Exhibit J. Mr. Roth represented the City of Bayonne in the Office of Administrative Law hearing, which resulted from Plaintiff's appeal of the local hearing in the underlying substantive matter. See Sullivan Cert., Exhibit K. It is well-established that "attorney-client privilege is deeply embedded in our jurisprudence and formed a part of the common law of England prior to the birth of this country." Upjohn Co. v. United States, 449 U.S. 383, 389, 101 S.Ct. 677, 684, 66 L.Ed.2d 584, 591 (1981). "The privilege recognizes that sound legal advice or advocacy serves public ends and rests on the need to 'encourage full and frank communication between attorneys and their clients.'" Id. "Preserving the sanctity of confidentiality of a client's disclosures to his attorney [promotes] an open atmosphere of trust," which is an integral component of effective representation. Reardon v. Marylayne, 83 N.J. 460, 470, 416 A.2d 852 (1980). It is more than clear that any consultation between Mr. Roth and the City and Mrs. Horn in the City, in the course of serving the City, was of a professional nature and specifically related to their representation of the City.

Accordingly, any deposition of Mr. Roth and Mrs. Horn is improper because it seeks information that is precluded by the aforementioned attorney-client privilege. Furthermore, Plaintiff has failed to demonstrate with any specificity that testimony sought of Mrs. Horn or Mr. Roth is relevant or material to the case at hand, which Plaintiff must do as described in the City's February 11, 2022 Reply Brief. See Sullivan's Reply Br.; See also Wasserstein v. Swern & Co., 84 N.J. Super. 1, 7 (App. Div.) cert. denied, 43 N.J. 125 (1964). The Plaintiff in this instant matter has failed to demonstrate why attorney-client privilege does not apply to the instant matter when in fact she is seeking information that specifically touches upon their roles as attorneys hired on behalf of the City.

CONCLUSION

For the foregoing reasons, and the reasons previously submitted by the City, this Court should grant the City's Motion to Quash Plaintiff's Subpoenas to Allan C. Roth, Esq., Ellen M. Horn, Esq., pursuant to Rule 1:9-2, or in the alternative, a protective order limiting Plaintiff's Subpoenas pursuant to Rule 4:10-3.

Respectfully submitted,
RUDERMAN & ROTH, LLC

/s/ Stephanie M. Platt
Stephanie M. Platt, Esq.

Encls.

cc: Nicholas Sullivan, Esq. (via e-file)
John F. Coffey II, Esq. (via email)