UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ALAINA HAMPTON,	)	
	)	
Plaintiff,	)	Case No. 18 CV 2069
v.	)	
	)	Honorable Sara L. Ellis
DPI, *et al*.,	)	
	)	
Defendants.	)	

PLAINTIFF'S MOTION TO COMPEL COMPLIANCE WITH RULE 45 DOCUMENT SUBPOENAS ISSUED TO D'JAVAN CONWAY, EMMA TAI AND STACY DAVIS GATES AND FOR AN AWARD OF COSTS AND ATTORNEY'S FEES

Plaintiff, Alaina Hampton ("Ms. Hampton"), by her attorneys, Shelly B. Kulwin and Rachel A. Katz, of Kulwin, Masciopinto & Kulwin LLP, hereby moves this Honorable Court pursuant to Rules 37 and 45 of the Federal Rules of Civil Procedure to: (a) compel compliance with the document subpoenas issued to D'Javan Conway ("Mr. Conway"), a lobbyist who previously worked with the Chicago Teacher's Union, Emma Tai ("Ms. Tai"), Executive Director at United Working Families and Stacy Davis Gates ("Ms. Gates"), Vice President of the Chicago Teacher's Union (collectively, "CTU Respondents"); and (b) award Ms. Hampton the reasonable attorneys' fees and costs incurred in seeking to obtain compliance, for which the CTU Respondents and their attorney Josiah Groff are jointly responsible, in light of their complete and unjustified refusal to comply with the subpoenas and/or their bad-faith abuse of the parties Rule 37 discussions to delay and obstruct Ms. Hampton's acquisition of the very limited and highly relevant subpoenaed materials. In support thereof, Ms. Hampton states as follows:

I. LEGAL STANDARD

It is well established that "[t]he scope of material obtainable by a Rule 45 subpoena is as broad as permitted under the discovery rules." *Andersen v. City of Chicago*, No. 16 C 1963, 2019

WL 423144, at *2 (N.D. Ill. Feb. 4, 2019) (citation omitted). In other words, a party may issue a Rule 45 subpoena to obtain discovery regarding "any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case . . ." Fed. R. Civ. P. 26(b)(1). Information within this scope of discovery need not be admissible in evidence to be discoverable. *Id.* Toward that same end, the determination of the relevance of information sought via a Rule 45 subpoena, as is the case under Rule 26 party discovery, is more broadly construed than under the stricter relevancy standard that applies during a trial. *In re Subpoena to the CME Group, Inc.*, No. 10 C 4675, 2010 WL 3998093, at *2 (N.D. Ill. Oct. 7, 2010). Thus courts have held that parties should be allowed to obtain "a broad range of *potentially* useful information" that pertain to issues raised by a party's claims. *Harris Davis Rebar, LLC v. Structural Iron Workers Local Union No. 1, Pension Tr. Fund*, No. 17 C 6473, 2019 WL 454324, at *1 (N.D. Ill. Feb. 5, 2019) (emphasis added); *see also, McClendon v. Ill. Dep't of Transp.*, 64 F.Supp.3d 1163, 1170 (N.D. Ill. 2014) (in suit for discrimination and retaliation, third-party investigative reports concerning defendants were discoverable in light of evidence they might document findings that defendants allowed political considerations to influence employment decisions). Accordingly, Rule 26 provides that a party should be allowed to obtain information in discovery - and by analogy here under Rule 45 - whenever a party has no other access to obtain the information, the information is important to assisting the parties to resolving the issues at stake in the action, and where benefit of the information sought outweighs any burden or expense in producing that information. Fed. R. Civ. P. 26(b)(1).

Faced with refusal to produce documents by a Rule 45 recipient, the issuing party may move to compel its compliance. *Young v. City of Chicago*, 13 C 5651, 2017 WL 25170, at *6 (N.D. Ill. Jan. 3, 2017)*; see also* Fed. R. Civ. P. 37(a) ("On notice to other parties and all affected persons,

a party may move for an order compelling disclosure or discovery."). Moreover, it is accepted that attorneys' fees should be assessed against a subpoena respondent who obstructs the discovery process. *See In re Subpoenas to Prof'l Sales & Mktg. Grp., Inc.*, No. 09 C 4864, 2010 WL 1489912, at *4 (N.D. Ill. Apr. 9, 2010) (assessing reasonable attorneys' fees against subpoena respondent that handled the matter "in a way that was obstreperous and obfuscatory, a deliberate attempt to stonewall and force [the defendant] to maximize its expenditures of time and energy"); *see also* Fed. R. Civ. P. 37(a)(5) (generally requiring award of reasonable attorney's fees and expenses against offending party or counsel if motion to compel is granted or if discovery is provided after filing).

In the instant case, as demonstrated below, Ms. Hampton issued narrow subpoenas to the CTU Respondents for information that was not only clearly relevant to her retaliation claim under the broader relevancy definition that applies in discovery, but also clearly relevant under the stricter standard that applies at trial. Further, as also established below, the CTU Respondents' repeated refusal to produce any documents at all strictly on relevancy grounds, as well as on other alleged bases that were facially and legally meritless, demonstrates that they, and their counsel clearly were and are acting to obstruct the discovery process in this case, and that their studied obstruction was done via a bad faith abuse of the Rule 37 process designed to ensure reasonable resolution of discovery issues.[1] For these reasons, as more fully articulated below, this Court should assess reasonable attorney's fees and costs against them.

[1] For example, the CTU Respondents and their counsel blithely and repeatedly asserted that the sought information was protected by the attorney client privilege even though they had not even searched for the material, let alone reviewed it. Accordingly, the CTU Respondents and their counsel failed, as required under Rule 45 when a person withholds subpoenaed material based on a claim of privilege or work product protection, and as requested by Plaintiff's counsel, to not only "expressly" make the claim as to each document to which it is being made, but also to "describe the nature of the withheld documents" in a manner that "will enable the parties to assess the claim." Fed. R. Civ. P. 45(e)(2)(A). Nor, as also required by Rule 45 and requested by Plaintiff's counsel did the CTU Respondents or their counsel produce a privilege log

II. RELEVANCY OF SUBPOENAS TO CTU RESPONDENTS

1. Ms. Hampton has alleged that the Defendant political committees retaliated against her for reporting and/or complaining of the sexual harassment identified in the Amended Complaint. *See* Dkt. No. 9. Ms. Hampton reasonably believes that such retaliation includes, among other things, interfering and precluding Ms. Hampton from obtaining employment with the Chicago Teacher's Union ("CTU") in connection with the race for state representative in Illinois' Fifth Legislative District for the 2018 Election Cycle ("Fifth District Race").

2. Information in Ms. Hampton's possession indicates that in or around August, 2017, Alderman Marty Quinn and others associated with the Defendant political committees began searching for and recruiting potential candidates to run in the Fifth District Race.[2] One of those candidates was Johnae Strong, a Grassroots Coordinator for CTU, whose candidacy was endorsed by CTU and United Working Families.

3. Additionally, text messages between Mr. Conway and Ms. Hampton in the fall of 2017, reveal that Mr. Conway and Ms. Hampton discussed, among other things: Mr. Conway scheduling a meeting between Ms. Hampton, Ms. Gates, Ms. Tai, and Ms. Strong in relation to a possible position with CTU in connection with Ms. Strong's campaign; Ms. Hampton's October, 2017 interview/meeting with CTU (*i.e.*, Ms. Gates, Ms. Tai and Ms. Strong); CTU's positive feedback in relation to its interview/meeting with Ms. Hampton; and, CTU's desire to go forward

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for the documents to which they were asserting the privilege. *Young*, 2017 WL 25170, at *6; see *also Mosley v. City of Chicago*, 252 F.R.D. 445, 449, n.5 (N.D. Ill. 2008) (non-parties "cannot . . . avoid the obligation to prepare a privilege log by unilaterally deciding that it would be too difficult"). Put another way, the CTU Respondents and their counsel interposed a totally frivolous attorney-client privilege objection to the Rule 45 subpoenas simply to obstruct discovery here.

[2] These documents, produced by the Defendants have been marked "confidential" pursuant to the Agreed Confidentiality Order entered by the Court on July 30, 2018 (Dkt. No. 36) and therefore are not attached to this motion.

with hiring Ms. Hampton. Shortly thereafter, Ms. Hampton received a text message from Mr. Conway requesting to meet with her to discuss CTU learning that Ms. Hampton was on "the outs" with Alderman Quinn. Meanwhile, CTU ceased all contact with Ms. Hampton about her potential involvement in the Fifth District Race. In other words, the text messages indicate that CTU was eager and ready to move forward with having Ms. Hampton work with them in connection with Ms. Strong's campaign, and then, after hearing she was *persona non grata* with the Defendants, went dark and stopped all communications with her. Given Ms. Hampton's claims here that Defendants retaliated against her for reporting the sexual harassment she endured while in their employ, information that the Defendants recommended, indicated, advised and/or persuaded CTU to stop considering her for work on Ms. Strong's potential campaign could reasonably lead to admissible evidence – if it is not direct evidence itself – that, as Ms. Hampton alleges, the Defendants took actions adverse to her career as a political consultant following her report to those same Defendants of Alderman Quinn's brother's sexual harassment of her while working for them.

4. Accordingly, on March 15, 2019, Ms. Hampton issued very narrow and limited subpoenas to the CTU Respondents seeking relevant information regarding the CTU Respondents' interactions and communications with each other, Ms. Hampton, Ms. Strong and individuals associated with the Defendant political committees regarding Ms. Hampton in order to determine what, if anything, transpired between the time in which CTU first indicated a desire to retain Ms. Hampton's services in connection with Ms. Strong's potential campaign and the time in which Ms. Strong withdrew her candidacy. *See* Exhibit. A (Rule 45 Subpoenas).

5. To date, however, the CTU Respondents have refused to search for and produce any responsive documents. Ms. Hampton has made every possible reasonable attempt to resolve this matter, as required under Rule 37, to no avail. *See* Exhibit B (Combined Rule 37

Communications).[3] As such, Ms. Hampton now moves to compel the CTU Respondents to produce the very limited but highly relevant categories of documents that they have inexplicably refused to produce and for an award of reasonable attorneys' fees and costs.

III. RESPONDENTS' REFUSAL TO PRODUCE RESPONSIVE DOCUMENTS

6. Upon receipt of the subpoenas, the CTU Respondents' counsel, Josiah Groff ("Mr. Groff"), contacted Plaintiff's counsel ("KMK"). On March 28, 2019, the parties held a telephone conference to discuss the CTU Respondents' questions about and/or objections to the subpoenas. During that discussion, Mr. Groff asserted that, in his view, the subpoenas sought information that was irrelevant and thus the CTU Respondents had no obligation to produce anything. Mr. Groff also relayed his clients' privacy concerns with respect to producing any responsive documents. KMK in turn explained the relevance of the sought information and informed Mr. Groff that any documents produced by his clients would be protected under the agreed confidentiality order previously entered in the case.

7. The very next day, Mr. Groff communicated in writing to KMK that the CTU Respondents would not produce any documents because:

a. the information sought was irrelevant;

b. obtaining it was unduly burdensome;

c. the sought information allegedly contained confidential/personal records;

d. they possessed none of the written communications the subpoenas sought; and

e. the sought documents were purportedly protected by the attorney-client and other unspecified privileges.

See Ex. B (Groff letter dated 3/29/19) at p.1-3.

[3] In addition to discussing the subpoenas via telephone on March 28, 2019 and April 29, 2019, the parties have exchanged over 45 emails. *See* Ex. B.

8. KMK responded to each objection, stating among other things, that: relevancy had already been explained in the aforementioned telephone conference (and again restated it); assertions of generalized privileges over documents for which the CTU Respondents had still had yet to search for, obtain, and let alone review, was not a valid basis for refusing production; Ms. Hampton had evidence that CTU Respondents did in fact have the type of communications they denied possessing; and, as an accommodation, KMK agreed to reduce the time frame of the subpoena to the seven month period between September 1, 2017 and March 1, 2018. *See id*. (KMK email dated 4/1/19) at p.14-16. Nevertheless, the CTU Respondents persisted in their refusal to produce any responsive documents claiming, incorrectly, that KMK failed to address the CTU Respondent's privacy concerns and that the subpoenas were only relevant for purposes of establishing Ms. Hampton's "mitigation efforts." *See id*. (Groff letter dated 4/4/19) at p. 17-18.

9. The very next day, KMK responded and stated, in part, contrary to Mr. Groff's protestations, that KMK specifically informed him when the parties first spoke on March 28, 2019, that any responsive documents produced would be protected by the confidentiality order already in place and that KMK would work with the CTU Respondents to ensure that all confidential communications or sensitive documents would be protected. Ex. B (KMK letter dated 4/5/19) at p.19-20. KMK also, for a ***third time***, identified the specific relevancy of the information sought and why it went well beyond (and was not even sought to establish) "mere mitigation." *Id*., p. 19. KMK concluded by reiterating its willingness to cooperate to obtain the very limited information sought by the subpoenas but stating, based on the communications to date, it was KMK's understanding that the CTU Respondents were standing on their blanket objections such that KMK would proceed with seeking the Court's intervention if Mr. Groff did not indicate otherwise prior to April 9, 2019. *Id*., p.20.

10. On April 12, 2019, Mr. Groff responded to KMK's April 5, 2019 letter.[4] In his letter, Mr. Groff again asserted an unduly burdensome objection, now claiming that responding to the subpoenas would require "dozens of people to spend hours or days" looking for documents; again demanded an explanation as to the relevancy of the documents sought; asserted that the subpoenas sought "confidential" electoral strategy information; and, claimed, now for the first time, that KMK did not address the respondents' privacy concerns because KMK "never sent [Mr. Groff] a copy [of the publically available confidentiality order] for review." Ex. B (Groff email dated 4/12/19) at p.23-24.

11. On the same day, KMK responded to Mr. Groff's correspondence, stating that contrary to KMK's request outlined in its April 5th letter, Mr. Groff's correspondence reflected an unwillingness to cooperate or engage in good faith discussions as it ignored what had transpired between the parties to date and raised the same meritless objections. Ex. B (KMK response dated 4/12/19) at p.25-26. More specifically KMK pointed out that in his April 12 correspondence, Mr. Groff:

- Disingenuously argued that it mattered not that KMK limited the scope of the subpoena during the parties prior communications to address his clients' purported concerns because the subpoenas, as originally sent, were worded otherwise;
- Ignored that KMK had previously informed him that the subpoenas were not seeking documents unrelated to Ms. Hampton or Ms. Strong in connection with the Fifth District Race;
- Ignored that KMK had previously agreed to limit the time frame of the subpoenas;
- Disingenuously argued that KMK did not address his clients' privacy concerns because KMK did not provide Mr. Groff with a copy of the confidentiality order, given that Mr. Groff had never requested a copy and the fact that the order was publically available; and,

[4] On April 9, 2019, the deadline imposed by KMK in its April 5, 2019 correspondence, Mr. Groff contacted KMK and requested that KMK hold off on filing a motion with the court so that he could respond to KMK's correspondence in which KMK advised, absent confirmation of a willingness to engage in good faith discussions and cooperation, that it would be filing a motion. KMK agreed Mr. Groff's request for an extension. *See* Ex. B, p. 21-22.

- Misstated KMK's articulated relevancy of the sought after documents and then, in reliance upon a legally erroneous definition of "relevancy" -- especially for purposes of a discovery subpoena -- again refused to produce documents based upon a clearly disingenuous premise.

In light of the forgoing, KMK stated it would proceed with a motion to compel compliance with the subpoena. *Id*.

12. On April 14, 2019, Mr. Groff sent an email in which he again, ***for a fourth time***, asked for KMK to explain the relevancy of the documents sought; argued a lack of clarity as to whether the subpoenas sought documents unrelated to Plaintiff even though KMK had already explained that they did not (*see*, ¶ 11, *supra*); inquired, for the first time, as to why Plaintiff could not obtain the sought information from Defendants (despite knowing that the Defendants would of course not have access to any communications between the CTU Respondents themselves); demanded that KMK produce all documents in Ms. Hampton's possession that justified the issuance of the subpoenas; and, contrary to all of his prior positions, claimed that there was no need to discuss whether the confidentiality order was sufficient to meet the CTU Respondents' privacy objections because the relevancy and burdensome issues had not yet been addressed. *See* Ex. B (Groff email dated 4/14/19) at p.27.

13. KMK once again addressed each and every issue raised by Mr. Groff, despite having already addressed those issues previously, and, to ensure no further confusion (although unnecessary given the voluminous detailed communications), identified, the specific information sought. *See* Ex B (KMK email response dated 4/14/19) at p.28; *id*. (KMK email response dated 4/15/19) at p.29. Specifically, KMK reiterated that it was seeking the following categories of documents from the CTU Respondents for the time period of September 1, 2017-January 30, 2018:

a. Communications (including text messages and emails) by and between Ms. Gates, Ms. Tai and Mr. Conway regarding Ms. Hampton;

b. Communications (including text messages and emails) between the CTU Respondents and Ms. Hampton, Speaker Madigan, Alderman Quinn, Johnae Strong, Craig Willert, Will Cousineau, Kristen Bauer, Tim Mapes, Michael Kasper, Heather Wier Vaught, Emily Wurth, and/or any other individual, regarding Ms. Hampton generally, or Ms. Hampton and Johnae Strong in connection with the Fifth District Race for the 2018 election cycle; and

c. Calendars, in electronic form or otherwise, maintained by Ms. Gates, Ms. Tai and Mr. Conway from September 1, 2017 through January 30, 2018.

Id. (KMK email response dated 4/15/19) at p.29. KMK further articulated, for now the ***third time***, that Ms. Hampton was not seeking communications regarding the Fifth District Race unrelated to Ms. Hampton and Ms. Strong or general CTU campaign strategy related information. *Id*. KMK also stated that Ms. Hampton was not looking for calendar entries that documented appointments or meetings that were unrelated to Ms. Hampton, Ms. Strong and/or the Fifth District Race and that the CTU Respondents could redact from their calendars any personal appointments and/or unrelated meetings. *Id*.

IV. CTU RESPONDENTS' OBSTRUCTIONIST TACTICS AND FURTHER REFUSAL TO PRODUCE RELEVANT DOCUMENTS

14. Despite KMK's continued cooperation and best efforts, over the course of the next month, the CTU Respondents, through Mr. Groff, repeatedly raised the same and variations of the same objections (all of which KMK had previously addressed) and continued in their refusal to look for and/or produce any responsive documents. In fact, between April 15, 2019 and the present, the parties have exchanged more than 30 emails and engaged in Rule 37 telephone conferences. *See* Ex. B (Rule 37 communications between 4/15/19 and 5/13/19) at p.30-62.

15. As evident from the many emails exchanged, the CTU Respondents, through their attorney Mr. Groff, having continued to engage in obstructions tactics, feigning cooperation in an attempt to prevent Ms. Hampton from rightfully seeking the Court's intervention. *See e.g.*, Ex. B,

p.30-31, 33, 36-37, 40-41, 45 (demanding, for the first time that any responsive documents, assuming such documents exist given that the respondents had yet to even search for responsive documents, that KMK agree to allow documents to be marked "attorneys' eyes only" and falsely claiming that KMK had previously assured Mr. Groff that responsive documents could be labeled as such); *id*., p. 33 & 35 (on 4/15/19, claiming again that subpoenas were unduly burdensome because Plaintiff could obtain the documents from defendants despite KMK stating, on numerous occasions, that Defendants would not be in possession of: (a) communications between the CTU Respondents themselves or (b) communications between the CTU Respondents and certain individuals for which Defendants did not have "control" over for purposes of discovery).

16. On April 26, 2019, despite continuing to receive resistance from the CTU Respondents and Mr. Groff, in the desperate hope to get the CTU Respondents to cease their obstructionist tactics and produce the responsive documents, KMK agreed to discuss the matter one last time, via telephone, on Monday April 29, 2019. *See* Ex. B (KMK email dated 4/26/19) at p. 52.

17. Unfortunately, as KMK anticipated, during the April 29, 2019 conference call, Mr. Groff continued to re-raise the same arguments and unfounded objections previously raised and previously addressed. During the conference call, Mr. Groff also refused to advise KMK: (a) when if ever the CTU Respondents would search for and produce any responsive documents; (b) when, if ever, Mr. Groff would be in a position to answer that questions on behalf of his clients; or, (c) when, if ever, Mr. Groff would even ask his clients to provide him with those answers. *See* Ex. B (KMK email dated 4/30/19) at p. 55.

18. Instead, over the next two weeks, the CTU Respondents sought to draw out the process further with new meritless issues. For example, Mr. Groff, for the first time, questioned

(despite KMK advising previously that Ms. Hampton is entitled to seek documents from third parties if Ms. Hampton is unable, for whatever reason, to obtain such documents directly from the defendants in the case) why the CTU Respondents had to even search for responsive documents since defense counsel had advised Mr. Groff that the Defendants did not have in their possession any communications with the CTU Respondents. *See* Ex. B (Groff email dated 5/13/19) at p. 62; *see also, id*., p. 35-36, 58, 60-62 (Groff emails demanding KMK identify the specific paragraphs in Ms. Hampton's amended complaint that would allegedly confirm the relevancy of the subpoenas).

19. In sum, the CTU Respondents and their attorney, Mr. Groff, have turned a narrow request for documents into a mammoth effort to stonewall and obstruct the discovery process, further raise Ms. Hampton's litigation costs, and preclude Ms. Hampton from learning the truth.[5] As such, Ms. Hampton now has no choice but to seek this Court's assistance and move to compel the CTU Respondents to produce the very limited but highly relevant categories of documents that they have inexplicably refused to produce. Ms. Hampton also seeks an award of reasonable attorneys' fees and costs incurred in connection with attempting to effectuated compliance with the subpoenas, to be paid by the CTU Respondents and attorney Josiah Groff, so as to deter what can only be described as intentional obstruction.

WHEREFORE, Alaina Hampton, respectfully moves this Honorable Court to grant this motion and enter an order:

(a) Compelling compliance, by a date certain, with the March 15, 2019 subpoenas issued to D'Javan Conway, Emma Tai and Stacy Davis Gates;

[5] Since Ms. Hampton produced in this case her supplemented integratory answers which disclosed that her application for assistance with legal fees and costs had been granted by the Time's Up Legal Defense Fund (monetary assistance that is limited and capped and ultimately will have to be paid back if Ms. Hampton prevails), she has been forced to deal with similar obstructionist tactics from various other individuals and entities associated with the Defendant-political committees.

(b) Awarding Ms. Hampton reasonable attorney's fees and costs incurred in seeking to obtain compliance from the CTU Respondents, to be paid by the CTU Respondents and their attorney Mr. Groff for failing to comply with the subpoenas and/or for specifically engaging in bad faith Rule 37 discussions in order to obstruct and delay the production of the sought documents, obstruct and delay Ms. Hampton's good faith efforts to obtain highly relevant evidence in support of her case; and/or, intentionally attempting to force Ms. Hampton to incur unnecessary attorneys' fees and costs in trying to obtain compliance with these subpoenas, including those incurred in the preparation of this motion; and/or,

(c) Providing any other relief this Honorable Court deems just and appropriate.

Respectfully submitted,

KULWIN, MASCIOPINTO & KULWIN, LLP

By: _____*/s/Rachel A. Katz*_____
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