

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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SABINA BURTON,

Plaintiff,

v.

Case No. 17-CV-36-JDP

BOARD OF REGENTS, ET AL

Defendants.

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**DEFENDANTS' BRIEF IN SUPPORT OF THEIR  
MOTION FOR A PROTECTIVE ORDER**

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Three individually named defendants, Staci Strobl, Deborah Rice, and Janelle Crowley, move the court for an order protecting them from discovery, per Fed. R. Civ. P. 26(c). Grounds for this motion are that the Defendants have good cause to believe a protective order is necessary to avoid annoyance, embarrassment, oppression, and undue burden.

**CERTIFICATION**

On March 13, 2018, counsel for Defendants and Plaintiff conferred via telephone in an effort to resolve the discovery dispute. Counsel also conferred via email. (Bensky Decl. ¶ 2.)

## FACTUAL BACKGROUND

1. Plaintiff Sabina Burton was a tenured professor in the Criminal Justice Department at the University of Wisconsin-Platteville. On February 16, 2018, UW-Platteville Chancellor Dennis Shields recommended the Board of Regents of the University of Wisconsin System (Board) revoke Dr. Burton's tenure. Chancellor Shields' tenure revocation recommendation followed a hearing in which a Faculty Appeal Panel found Dr. Burton publicly disclosed confidential personnel information about colleagues and engaged in disrespectful, harassing and intimidating behavior toward colleagues. The Panel unanimously concluded there was clear and convincing evidence to establish just cause for dismissal due to the degree to which Dr. Burton negatively affected the Criminal Justice Department's, and the university's, day-to-day functioning. The Board revoked Burton's tenure on June 7, 2018. (Bensky Decl. Ex. 3.)

2. Burton's discord with UW-Platteville began in October 2012, when a student reported a non-tenured professor had given her a note during class that said, "Call me tonight!" with his phone number. The student reported this to Burton, who in turn reported it to the Dean of the college, Elizabeth Throop. Within 24 hours, the Criminal Justice Department Chair, Tom Caywood and Throop had investigated the matter and asked the professor to apologize to the entire class, which he did (the professor stated he was giving an example of a

“breach” experiment in which people act outside of social norms). Ultimately, the professor who had handed out the note was denied tenure. (See Case No. 14-CV-274, Dkt. 62, ¶¶ 41, 44, 45, 51, 53, 54, 57; Dkt. 42, 152:15-16.) There is no evidence that this professor ever repeated his poor behavior. UW-Platteville addressed the matter swiftly and thoroughly.

3. Despite this outcome, in April 2014, Burton sued the Board, Caywood, and Dean Throop for sex discrimination, retaliation, and a handful of other alleged civil rights violations. In September of 2015, Burton amended her complaint to add Mike Dalecki as a defendant. Dalecki was Burton’s department chair at the time. (See Case No. 14-CV-274, Dkts. 22, 28.) This court granted summary judgment on all claims in that case on March 18, 2016, denied Burton’s motion for reconsideration on June 22, 2016, and on April 10, 2017, the Seventh Circuit upheld the summary judgment decision.

4. As part of case 14-CV-274, Burton’s counsel deposed Chancellor Dennis Shields, Dean Throop, Department chairpersons Caywood and Dalecki, and Professors Deborah Rice, Valerie Stackman, Cheryl Fuller, and HR director John Lohmann.

5. Burton filed a new lawsuit against the Board and several colleagues in January 2017. In February 2018, Burton’s counsel issued a deposition notice to Chancellor Dennis Shields, Janelle Crowley, Deborah Rice, Staci Strobl, Patrick Solar, and Michael Dalecki. (Bensky Decl. Ex. 2.)

6. On March 12, 2018, Counsel for the Defendants cancelled all but Chancellor Shields' deposition because, in preparing for the upcoming depositions, Defendants' counsel learned the extent to which the Plaintiff has subjected the witnesses to cyber-bullying, intimidation, and harassment. Based on this information, defendants' counsel determined a protective order was necessary to protect the witnesses from further bullying by the Plaintiff. (Bensky Decl. ¶ 4.)

7. In particular, I learned that Burton's behavior had caused the witnesses extreme stress and that there was particular concern Burton would use their deposition testimony to further harass them by posting the testimony on the Internet, publicly discussing the testimony in a disparaging manner, using the testimony to turn students and other faculty against them, or directly questioning them about the testimony. As this motion explains below, these are behaviors that Burton had previously engaged in.

8. On or around March 13, 2018, counsel for the parties conferred and decided to mutually ask for a stay of the case, for the reasons described in the joint motion, Dkt. 44. Because the litigation was stayed, and because defendants' anticipated the Plaintiff would amend her complaint if the Board revoked tenure, counsel for the defendants did not file a motion for a protective order at that time.

## LEGAL STANDARD

The Federal Rules of Civil Procedure instruct that discovery of relevant information may be tempered by burdens of production:

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

Fed. R. Civ. P. 26(b)(1); *Ossola v. Am. Express Co.*, 149 F. Supp. 3d 934, 936 (N.D. Ill. 2015) (discovery is broad but there is a proportionality aspect to it).

“Although there is a strong public policy in favor of disclosure of relevant materials, Rule 26(b)(2) of the Federal Rules of Civil Procedure empowers district courts to limit the scope of discovery for good cause. *Patterson v. Avery Dennison Corp.*, 281 F.3d 676, 681 (7th Cir. 2002). Good cause exists when justice requires the protection of a “party or a person from annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c)(1).

District courts exercise broad discretion over discovery disputes. *Sattar v. Motorola, Inc.*, 138 F.3d 1164, 1171 (7th Cir. 1998). “The party opposing discovery has the burden of showing the discovery is overly broad, unduly

burdensome, or not relevant.” *Arassi v. Weber-Stephen Prod. LLC*, No. 13-CV-684, 2014 WL 1385336, at \*2 (E.D. Wis. Apr. 9, 2014).

### **GROUNDS FOR PROTECTIVE ORDER**

The Seventh Circuit federal courts recognize discovery materials may not be used for any improper purpose, such as making documents available over the Internet as a means to harass, intimidate, and defame witnesses. *See Musa-Muaremi v. Florists' Transworld Delivery, Inc.*, 270 F.R.D. 312, 322 (N.D. Ill. 2010) (citing Standards for Professional Conduct Within the Seventh Federal Judicial Circuit, Lawyers' Duties to Other Counsel ¶ 10 (“We will not use any form of discovery or discovery scheduling as a means of harassment.”)). Defendants do not suggest that Plaintiff's counsel is abusing the discovery process. On the contrary, Plaintiff's counsel has acted with exemplary professionalism at all times during this case. (Bensky Decl. ¶ 2.) Defendants are strictly concerned with the Plaintiff's demonstrated record of cyber-bullying, threats of additional (and baseless) litigation, and personal attacks upon the witnesses she seeks to depose. (Bensky Decl. ¶ 4.)

Good cause exists to issue a protective order quashing the deposition notices for Staci Strobl, Deborah Rice, and Janelle Crowley<sup>1</sup> because their

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<sup>1</sup> Originally, professors Mike Dalecki and Pat Solar received deposition notices; however, Plaintiff's counsel withdrew her requests to depose them. (Bensky Decl. ¶ 2.)

testimony is not relevant to the claims that can survive a motion to dismiss, because Burton has in the past used these witnesses' testimony and words to cyber-bully and publicly shame them, and because Burton has continually harassed and intimidated these witnesses over the course of several years.

**I. The proposed depositions will not lead to relevant information**

Discovery is broad but a party is limited to discovering information relevant to her lawsuit. The current operative pleading is the Fourth Amended Complaint. (Dkt. 51.) It asserts eight claims against 23 individually-named defendants, including Crowley, Rice, and Strobl, and the Board of Regents. The Defendants have moved to dismiss all but two of Burton's Title VII retaliation claims and one Rehabilitation Act claim against the Board of Regents, and have moved to dismiss all individual defendants. (Dkts. 56-57.)

While the court has yet to rule on the Defendants' recent motion to dismiss, dismissal of some claims and some defendants is likely, given Burton's litigation history: This court's September 5, 2017 order on the Defendants' motion to dismiss the First Amended Complaint dismissed six individuals (including Throop and Strobl – who have been re-named) and several claims. (Dkt. 21 p. 13-16.) Plaintiff's counsel voluntarily withdrew several claims and three defendants in her Second Amended Complaint after the Defendants' attorney sent a detailed emailing explaining the legal basis for dismissal. (Bensky Decl. ¶ 5; Dkts. 29, 41.) In Burton's first lawsuit against the Board

and her supervisors (case no. 14-CV-274), she conceded she had no evidence to support several claims and her other claims were dismissed.

Given Burton's history of using the federal courts to air trivial grievances against her colleagues only to withdraw or see them defeated as a matter of law, and her attempts to reassert claims against defendants who have already been dismissed in these proceedings, it is likely the court will dismiss some claims and some defendants from the Fourth Amended Complaint, thereby narrowing the scope of allowable discovery. As it stands, Burton is allowed to proceed on a retaliation claim based on the Chancellor's June 3, 2016, letter of direction, and the Defendants did not move to dismiss Burton's Title VII retaliation claim based on the Chancellor's initiation of dismissal proceedings or the Board's June 7, 2018 tenure revocation in the Fourth Amended Complaint. Defendants have also not moved to dismiss Burton's failure to accommodate Rehabilitation Act claim against the Board based on the hearing panel's decision to hold the May 25, 2017 hearing despite Burton's claim that she was too ill to attend. The people Burton seeks to depose—Deborah Rice, Staci Strobl, and Janelle Crowley—had no involvement in these things. Chancellor Shields was responsible for the June 3, 2016 letter of direction and initiation of tenure revocation proceedings and the hearing panel was responsible for scheduling the hearing. (*See* Bensky Decl. Exs. 3, 14.) Therefore, their deposition testimony is not relevant.

**II. Burton's use of litigation procedures to harass her colleagues warrants a court order protecting them from being compelled to participate in discovery**

Burton has proven she will stop at nothing to harass and intimidate her colleagues. In fact, she and her husband created a website—UniversityCorruption.com—detailing a timeline of Burton's every grievance against UW-Platteville and her colleagues, with hyperlinks to documents, deposition testimony, court exhibits, and surreptitious recordings of meetings and conversations with colleagues. (*See* Bensky Decl. Exs. 10, 13.) The Burtons even posted a receipt for a firearm that Burton's husband purchased to allegedly protect himself from Burton's colleague, Pat Solar. (Bensky Decl. Ex. 9.) While Burton has every right to pursue claims in which she has met the very low threshold of surviving a motion to dismiss, the Federal Rules of Civil Procedure do not allow her to wage terror on her colleagues when their deposition testimony will have little if no bearing on the outcome of her claims.<sup>2</sup>

Burton's treatment of the current department chair, Dr. Staci Strobl, has been particularly egregious. During the tenure revocation proceedings, Strobl testified she felt fearful of Burton's behavior. The Burtons then used excerpts

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<sup>2</sup> Counsel for the Defendants does not make this statement lightly. Burton's colleagues have reported to counsel that Burton's behavior towards them have caused extreme mental distress and significant disruption in their work. (Bensky Decl. ¶ 4, Ex. 15, 66:16-24.)

of this testimony to disparage Strobl on social media, accuse her of violating the law, and then sue her in federal court for defamation. (See Dkt. 29 p. 28 ¶ 286.)<sup>3</sup> (A defamation claim of this nature is borderline frivolous under Wisconsin conditional privilege law because the complained of statements were made during quasi-judicial proceedings. *See, e.g., Converters Equip. Corp. v. Condes Corp.*, 80 Wis. 2d 257, 264, 258 N.W.2d 712 (1977); *Olson v. 3M Co.*, 188 Wis. 2d 25, 36–37, 523 N.W.2d 578 (Ct. App. 1994) (citing *Zinda v. La Pac. Corp.*, 149 Wis.2d 913, 921–22, 440 N.W.2d 548, 552 (1989)).

Burton has also used her colleagues' testimony that was provided in the course of litigation or administrative proceedings to publicly shame them, misrepresent them, and pit them against one another. For example, Strobl testified during Burton's May 25, 2017 tenure revocation hearing that she was fearful of Roger Burton because of escalating verbal animosity and his "everybody is against me" attitude. After this testimony, Sabina Burton posted Strobl's comments on social media and announced that Strobl was frightened of Roger Burton because he is a former Marine and Gulf War Vet—an allegation Burton pulled out of the blue. (Bensky Decl. ¶ 10, Ex. 6.) People, some of whom identified themselves as Platteville students, commented on

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<sup>3</sup> Burton withdrew this claim prior to Strobl's appearance when it became apparent that Burton had not filed the required notice of claim per Wis. Stat. sec. 893.82(3), a prerequisite to suit. (Bensky Decl. ¶ 5.)

Burton's post. The comments include, "OMG Very Unprofessional. I certainly could not trust her research or lectures now that I see how easily she embraces cheap bias. Disgraceful in an academic!" Another commenter referred to Strobl as an "ignorant twat." To this comment, Dr. Burton replied, "Strobl's spitefulness is based on his military service and the fact that he airs our grievances in a controlled manner through universitycorruption.com." (Bensky Decl. Ex. 6.)

The comments demonstrate just how damaging Burton's social media postings are. If Strobl is compelled to sit for a deposition, she will be compelled to answer questions under oath, which in turn is likely to subject her to more cyber-bullying from Burton. And it is cyber-bullying. Those words are not used lightly. Burton has accused Strobl, on social media, of disrespecting veterans—a claim that is totally unfounded. She has done so by taking testimony Strobl gave during a May 25, 2017 hearing out of context, posting it publicly, and stating her unsubstantiated opinion about it as fact. The few student comments are just one indication of how harmful Burton's actions are to Strobl personally and to her career as an educator and criminal justice scholar.

Compounding this issue, on November 16, 2017, Plaintiff's husband Roger Burton emailed Strobl a letter demanding she retract the testimony she gave on May 25 and apologize to him. In this letter he accused her of violating

Wis. Stat. §§ 943.30(4) and 942.01(1) because she made statements that injure him. He went on to say,

I believe you intentionally made these comments in a malicious attempt to influence the official action of public officers against my wife.

Your testimony threatens my business as a real estate professional and could expose me and my family to physical harm.

...

I ask you to write, and appropriately distribute, a retraction and apology that is both sincere and satisfactory to me. I request that you do so within seven calendar days.

(Bensky Decl. Ex. 7.) Strobl provided testimony in a quasi-judicial setting and six months later was accused of committing crimes. One month after that, Sabina Burton sent Strobl a similar letter accusing Strobl of committing a crime and demanding a retraction of her testimony. (Bensky Decl. Ex. 8.) Then, on December 28, 2017, Burton amended her complaint in this case to include a defamation action against Strobl that was only voluntarily dismissed because Burton did not file a notice of claim.

Sadly, Burton's bullying of Strobl did not stop there. Burton has written to university officials and at least one journalist accusing Strobl of cronyism, favoritism, unprofessional behavior, misrepresentation, sexism, and referring to Strobl as unqualified for her position. (Bensky Decl. Ex. 16.) Burton's

demonstrated behavior shows that a deposition would further subject Strobl to additional bullying. This has to stop.

Burton's behavior against Rice is similarly disturbing. Strobl, as Rice's supervisor, testified during the May 25, 2017 hearing:

[Burton] had been on this campaign that Deb Rice was very, very terrible. It made Deb very uncomfortable. Deb felt unsafe in her workplace. She often came and sat in my office and asked me to help her with his problem, and I tried to do that throughout my time here. It was upsetting to her. It was very, very upsetting to her....

(Bensky Decl. Ex. 15, 63:1-7.) Strobl further explained that after Rice's father died, Burton left a Hallmark card in Rice's university mailbox that said, 'I'm sorry that your father passed away. This is how I felt in 2012,' or something of that nature." In the context of Burton having spoken very poorly and publicly about Rice over the course of several years, the card was disturbing. (Bensky Decl. Ex. 15 p. 63:15-64:18.)

Burton has sued Rice in federal court for allegedly making stray remarks about Burton's behavior and ethnicity even though Rice, who is an academic staff member, has no control over the terms or conditions of Burton's employment. (Bensky Decl. Ex. 15, 62:1-3.) Burton has refused to be associated with Rice, and told Strobl that Rice is a very mean person who has defamed her. Burton further told Strobl, "Rice is close to Dalecki and was clearly against you becoming chair. She shouldn't even be working for this department

anymore as defamation is a crime in WI,” in an effort to alienate Rice from Strobl, Rice’s direct supervisor. (Dkt. 58-1.)

Burton has likewise vilified Elizabeth Throop. During Throop’s deposition in *Burton I*, Throop testified that Rice reported to Throop and Dalecki that two students had told her (Rice) that Burton had canceled the last day of class to fly to Germany. (14-CV-274, Dkt. 42, 14:6-15:13.) Rice, during her deposition, said she told Dalecki that two students had told her that Burton was going to Germany on Friday, but Rice denied telling Throop that Burton had cancelled class. (14-CV-274, Dkt. 49, 15:11-21.) From this discrepancy, Burton determined that either Throop or Rice had lied under oath, and reported this to the Board of Regents. (Bensky Decl. Ex. 12.) At the same time, Burton has used this very statement as ammunition against Rice in her federal complaints. (Dkt. 51 ¶¶ 126, 130, 156; *See also* Dkt. 58-1) (“Rice also falsely and with malice reported to Dean Throop that I had cancelled class which resulted in disciplinary actions against me.”)

Burton, either herself or through her husband, has also been responsible for disseminating false information about the university and its faculty to students and others. For example, in March of 2017, a flyer was handed out to students and others outside the university-wide annual lecture. (Bensky Decl. Ex. 4.) Hundreds of students, faculty, staff, and community members were in attendance to hear Colonel Eileen Collins, who was the first woman to pilot an

American spacecraft. The flyer advertised the Website Mr. Burton manages, called “universitycorruption.com” and one of Burton’s Facebook pages, facebook.com/PIOSvsINJUSTICE. The flyer alleged UW-Platteville’s Criminal Justice Program was covering up crime, that student victims of sexual harassment and sexual violence and their advocates are silenced, and divulged details of alleged crimes by administrator, legal professionals and employees; and how they are rewarded/protected, among other things. Similarly, Burton advertised UniversityCorruption.com on a Wiki page about academic jobs. Here, Burton asserted that UW-Platteville students are not safe and neither are faculty members who come to their aid. (Bensky Decl. Ex. 5.) This is but another example of the false accusations Burton has made that reflect poorly on her colleagues, and upon Crowley in particular, as the Human Resources director.

Throughout four years of litigation, Burton has not given any examples of situations (other than her October 2012 complaints, addressed in the first lawsuit) where UW-Platteville allegedly mis-handled a sexual harassment complaint or “silenced” victims of sexual harassment and sexual violence. And despite engaging the Platteville Police Department, the Department of Justice’s Division of Criminal Investigation, Governor Scott Walker, and the federal district courts, Burton has not substantiated that there have been any “crimes” committed by “administrators, legal professionals and employees.”

Nor has she substantiated allegations that the university silenced victims of sexual harassment and sexual violence. Burton's outright lies have caused substantial distress and harm to Strobl, Rice, and Crowley (amongst many others). Now, with her discovery requests, she seeks to continue dragging them through the mud.

Burton's First Amendment rights may extend to disseminating flyers, but UW-Platteville faculty and staff—particularly those in the criminal justice department—should not be compelled by Burton to contribute to the information that Burton will turn around and use against the defendants, witnesses, and the university to cyber-bully, publicly shame, and harass.

Absent a court order, the Plaintiff has every right to post documents that have been publicly filed in federal court on the Internet. However, the First Amendment does not give her the right to compel statements of witnesses through depositions so she may post bits and pieces on the Internet next to disparaging opinion statements, call people liars, and send letters accusing colleagues of crimes because of their testimony.

It goes without saying that Burton's behavior is personally upsetting to the people that Burton seeks to depose and it has cut deeply into the Criminal Justice Department's ability to manage operations and maintain positive working relationships. But it's the Burtons' misuse of compelled statements—

deposition and hearing testimony—that warrants an order protecting Strobl, Rice, and Crowley from being deposed in this case.

No witness should be compelled to testify under oath and face this type of intimidation. Under no circumstances should Strobl, Rice, or Crowley be compelled to provide testimony at a deposition. Anything Burton could possibly need regarding her lawsuit has already been said during the revocation hearing and in documents.

### **III. Burton has access to all relevant information she needs**

Three adverse actions underlie Burton’s retaliation claims: the June 3, 2016 letter of direction, Chancellor Shield’s initiation of tenure revocation proceedings, and the tenure revocation decision. Chancellor Shields, who is available for deposition, was involved in the first two decisions and recommended the Board’s action on the third. Crowley, Strobl, and Rice have no knowledge of any of these actions. As for the hearing body’s decision to proceed with the May 25 hearing, that decision came from the hearing body itself, and Burton has received all correspondence related to Burton’s request to postpone the hearing (it was either initiated by her, received by her, or made part of the hearing record, which has been filed in Grant County circuit court).

Depositions of Strobl, Rice, and Crowley would not yield any relevant information and are unlikely to lead to admissible evidence. The depositions

would, however, lead to more undue stress, harassment, and bullying by Burton.

### CONCLUSION

For the reasons stated, the Defendants ask this court to enter an order prohibiting Burton from deposing Janelle Crowley, Staci Strobl, and Deborah Rice, and prohibiting her from issuing any written discovery to them.

Dated: September 6, 2018.

Respectfully submitted,

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