

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

NEIL AND LACY WEST,)
)
Plaintiffs,)
)
v.)
) Case No. CJ-2025-135
STATE FARM FIRE AND CASUALTY)
COMPANY and NANCY HOLCOMB INS.)
AGENCY, INC.,)
)
Defendants.)

FILED
DISTRICT COURT
COMANCHE COUNTY, OKLAHOMA
October 8, 2026 4:57 PM
ROBERT MORALES, COURT CLERK
Case Number CJ-2025-135

DEFENDANT STATE FARM FIRE AND CASUALTY COMPANY’S RESPONSE
AND OPPOSITION TO (1) PLAINTIFFS’ MOTION TO RECONSIDER THE
ENTRY OF A DEPOSITION PROTOCOL AND (2) PLAINTIFFS’
SUPPLEMENTAL BRIEF REGARDING THE SEPTEMBER 24, 2026
PROTECTIVE ORDER AND DEPOSITION PROTOCOL

Plaintiffs first refused to confer about the content of a Deposition Protocol, then opposed it in briefing without any offered suggestions except that it should not be had at all, did the same thing at oral argument and now, having lost, ask that the Court in one brief to withdraw the protocol because not permitted by law and then in a second brief a few days later, to enter their protocol instead, and on an emergency basis. They make this ask all the while complaining about State Farm's failure to produce 800,000 documents in approximately 45 days with a motion for extension pending, while ignoring that it took them over 100 days to produce just **700 pages** of specific to Plaintiffs' claim and their house when they did not bother to ask for an extension at all. This also comes when there are only a few depositions remaining – the four-hour deposition of Jon Farney and experts. It also comes on the heels of (finally) the depositions of those actually involved in the handling of this claim where counsel for Plaintiffs continued their sarcastic treatment of witnesses while insisting that State Farm's counsel was violating the Deposition Protocol when they dared to say anything other than form in response to continued badgering of the witness.

For these general reasons and more stated below, State Farm Fire and Casualty Company ("State Farm") respectfully opposes Plaintiffs' demands that the Court reconsider its June 25, 2026 Order entering a protocol (the "Deposition Protocol") governing the conduct of lawyers at depositions in this matter and enter a self-serving "Alternative Protocol" that would implicitly condone their counsel's misconduct at Ms. Manduca's deposition and improperly immunize them from the statutory protocol for terminating harassing depositions. Plaintiffs' Motion to Reconsider the Entry of a Deposition Protocol (the "Motion") and Supplemental Brief Regarding the September 24, 2026 Protective Order and Deposition Protocol (the "Supplemental Brief"), in

addition to being contradictory, provide no legal basis for the Court to reconsider or amend the Deposition Protocol, which the Court entered following extensive briefing and argument.

Plaintiffs' sole remaining objections to the Deposition Protocol are premised on their misreading of paragraphs B(4) and C(6), which they mischaracterize as allowing "a deposition to be suspended on demand." (*See* Supp. Br. at 2.) But that concern is entirely eliminated by the Court's addition to the Protocol in paragraph C(6) that the parties are to "get the Court's permission prior to terminating the depo[sition] on these grounds." (Court's Ex. 1 to September 25, 2026 Order) Neither do those provisions replace the established process under 12 O.S. § 3230(E)(2) for motions to terminate or limit a deposition. Rather, they provide only an evidentiary presumption—which Plaintiffs would have ample opportunity to rebut—that their counsel's violations of the Local Rules and the OBA's Standards of Professionalism show that a deposition is being conducted in bad faith. State Farm does not anticipate suspending any deposition without following the Court's Order and following the established process set forth in 12 O.S. § 3230(E)(2). Nonetheless, Plaintiffs' insistence on deleting the Deposition Protocol's sole enforcement mechanism to curb their counsel's misbehavior is telling—and further emphasizes the need for such provisions here.

Nor is there any rationale to enter Plaintiffs' self-serving, belatedly proposed Amended Protective Order and Deposition Protocol (*see* Supp. Br. at Ex. A, herein, "Alternative Protocol"). Rather than simply "amend" the existing Deposition Protocol, Plaintiffs' Alternative would deliberately vitiate its provisions and create an *opposite* presumption that their counsel's violations of the Local Rules and the OBA's Standards of Professionalism are, by themselves, *insufficient* to support termination of a deposition under Section 3230(E)(2). In effect, Plaintiffs ask this Court to retroactively condone the very lawyer misconduct, in Ms. Manduca's deposition, that led to State Farm's request for the Deposition Protocol. Regardless, Plaintiffs' Alternative Protocol—like their

Motion to Reconsider—is effectively moot: at most, it would apply to one fact deposition and experts, the number of which remains unknown because Plaintiffs have continued to refuse to supplement their discovery responses to provide the required information that would permit State Farm to complete its own expert work. Plaintiffs’ unapologetic request for a do-over should be denied.

BACKGROUND

On June 23, 2026, Plaintiffs deposed Nicole Manduca, a Director in State Farm’s Property & Casualty department who was not involved in the handling or supervision of Plaintiffs’ insurance claim—but whom Plaintiffs contend was an “architect” of a supposed “scheme” by State Farm to lower indemnity payments by, *inter alia*, misattributing roof damage from storms to non-covered “wear and tear.” (See Jan. 30, 2026, Pls.’ Opp. to State Farm’s Mot. for Prot. Order at 1–2.) Counsel for Plaintiffs repeatedly violated established law and disregarded norms of the baseline expectations for professional conduct at Ms. Manduca’s deposition. This is detailed in State Farm’s July 27, 2026 Motion for Entry of a Protective Order and Deposition Protocol (“Protocol Motion”) and in the deposition transcript and is not repeated here.

On July 27, State Farm filed its Protocol Motion, requesting that the Court enter a Deposition Protocol governing all counsel’s conduct at future depositions. Plaintiffs responded to the Protocol Motion on August 11, asserting variously that it was “childish” and “desperate” and—despite specific and repeated examples of Plaintiffs’ counsel’s misconduct that State Farm cited in its Motion—contending that it contained unidentified “false and misleading” “accusations” about Mr. Whitten’s behavior. (See Pls.’ Opp. to Protocol Mot. at 1.) Plaintiffs cited no case, statute, rule, or other authority preventing or even disfavoring such protocol (because there is none) and instead resorted to finger-pointing—primarily arguing that Ms. Manduca (a State Farm employee who had given a deposition *only two times before* June 23) was so “hostile” and “sophisticated” a deponent

that Mr. Whitten (a lawyer with over 46 years' experience) was apparently forced to resort to shouting, interrupting, and making false representations of the law. (*See id.* at 5–9.)¹

On September 24, following extensive briefing which involved no alternative protocol by Plaintiffs or redlining of that provided by State Farm, the Court held a hearing on the Protocol Motion. At that hearing, the Court asked Plaintiffs' counsel more than once whether they would also like to argue their July 28 Motion for Discovery Sanctions Against State Farm for Obstructive Deposition Conduct ("Motion for Sanctions"), but Plaintiffs' counsel declined to argue their Motion for Sanctions even after State Farm's counsel offered to address it. (*See Exhibit 1*, Sept. 24, 2026 Hearing Transcript pp. 99-102.) In doing so, Plaintiffs' counsel took the position that the Protocol Motion was separate and distinct from their Motion for Sanctions. (*See id.*) The Court, noting that "[t]his has been the most contentious and litigious case I've ever dealt with," and that "anything we can get to keep us on the rails is beneficial," indicated its intent to enter the Deposition Protocol. (*Id.* at 101-102.)

On September 25, the Court granted State Farm's Protocol Motion and entered State Farm's proposed Protocol with two minor edits. The Court clarified that under paragraph (C)(6), which provides that violations of paragraphs (C)(1) through (C)(5) of the Protocol "will be *prima facie* evidence that the deposition at issue is being conducted in bad faith or in such manner as to unreasonably annoy, embarrass, or oppress the deponent and/or the opposing party pursuant to 12 O.S. § 12-3230(E)(2)," that the parties are required "to get Court permission prior to terminating" a deposition on those grounds. (*See* Sept. 25, 2025 Protocol Order, at 3.) In addition, the Court

¹ Even now, Plaintiffs refuse to take responsibility for their counsel's conduct—arguing that there is a "factual question" as to "whether the examination broke down because counsel was abusive or because the witness would not answer." (*See* Mot. at 2.) But neither the Local Rules nor the OBA's Standards of Professionalism excuse violations based on a witness's alleged unresponsiveness, and the record does not bear out Plaintiffs' contentions in any event.

clarified the Protocol as to the review of deposition exhibits on the record, adding that “[i]f time is used during deposition unreasonably then the Court will provide additional depo[sition] time.” (*Id.* at ¶ (D)(5).) The Court otherwise entered State Farm’s Protocol as proposed.

Less than 24 hours after the Court entered the Protocol, Plaintiffs filed their Motion seeking reconsideration. For the first time, Plaintiffs argue that the Court did not have authority under Oklahoma law to enter *any* deposition protocol (*see* Mot. at 1); that the OBA’s Standards of Professionalism “forbade [their] use” in a deposition protocol (*see id.*); that State Farm failed to satisfy its conference requirements before filing the Protocol Motion (*see id.* at 7–8); and that—***directly contrary to their own counsel’s decision not to argue their Motion for Sanctions at the July 24 hearing***— the Court should not rule on State Farm’s Protocol Motion until it rules on Plaintiffs’ Motion for Sanctions (*see id.* at 1–2). Plaintiffs also argue that the Court should manually supervise each of the upcoming depositions rather than entering a Protocol. (*Id.* at 2.) Plaintiffs do not explain why their new legal arguments were apparently unavailable when they first filed their Opposition to State Farm’s Protocol Motion or why they failed to raise them earlier. (*See generally id.*) Nor do they explain why the Court should not decide the Protocol Motion until it decides their Motion for Sanctions when ***their counsel specifically declined to argue that motion a day earlier.*** (*See generally id.*)

Five days later, Plaintiffs filed their Supplemental Brief. While the brief purports to “supplement” their Motion to Reconsider, it largely contradicts the arguments raised in their Motion. For example, in direct opposition to their assertion five days earlier that the Court lacked authority under Oklahoma law to enter a deposition protocol, Plaintiffs’ Supplemental Brief asks the Court to enter what Plaintiffs term an “Alternative Protocol” containing many of the same provisions as the Deposition Protocol. And in contradiction to their prior argument that the drafters

of the OBA's Standards of Professionalism "forbade their use" in deposition protocols, their own Alternative Protocol seeks to incorporate the same standards. Moreover, in opposition to their contention that State Farm's attempts to meet and confer regarding the Protocol Motion were inadequate, Plaintiffs' Supplemental Brief seeks entry of an Alternative Protocol without *any attempt* to confer with State Farm. Plaintiffs do not explain this about-face or seek to withdraw their Motion to Reconsider. Plaintiffs' Supplemental Brief simply demands the Court enter their Alternative Protocol, or, "in the alternative," strike the evidentiary presumptions in paragraphs B(4) and C(6) of the Deposition Protocol and personally monitor the depositions of State Farm's witnesses in person or by videoconference. (*See* Supp. Br. at 10.)

ARGUMENT

The Court should deny Plaintiffs' Motion to Reconsider for at least three reasons. *First*, Plaintiffs' Supplemental Brief effectively withdraws their Motion's belated legal contentions that the Court lacks authority to enter a deposition protocol, which are incorrect in any event. *Second*, Plaintiffs' mischaracterization of paragraphs B(4) and C(6) as allowing State Farm to "suspend[]" a deposition "on demand" is both wrong as evidenced by the Court's own added limitation to the provision and it is in all events not a reason to eliminate the sole provisions in the Protocol that provide any incentive to Plaintiffs' counsel to curb their deposition misconduct. *Third*, there is no need for Plaintiffs' self-serving Alternative Protocol, which contrary to Plaintiffs' representations would deliberately undermine the Court's Deposition Protocol and retroactively condone Counsels' misbehavior at Ms. Manduca's deposition.

I. PLAINTIFFS HAVE DISCLAIMED AND WITHDRAWN THEIR BELATED, LEGAL OBJECTIONS, WHICH ARE INCORRECT IN ANY EVENT.

As an initial matter, the Court should deny Plaintiffs' Motion to Reconsider because Plaintiffs themselves disclaim and withdraw the belated legal arguments they raise against the Protocol. Regardless, there is no merit to those arguments.²

A. The Court Has Ample Authority to Enter a Deposition Protocol Under Sections 3226(C) and 3226.1.

Pursuant to 12 O.S. § 3226(C) and 12 O.S. § 3226.1, the Court, upon good cause shown, “may enter *any order* which justice requires to protect a party or person from annoyance, harassment, embarrassment, oppression or undue delay, burden, or expense,” including an order specifying “that the discovery may be had only on specified terms and conditions.” 12 O.S. § 3226(C) (emphasis added); *see also* 12 O.S. § 3226.1. Courts across the country have used similar authority to enter deposition protocols analogous to the Deposition Protocol. *See, e.g., In re: Social Media Adolescent Addiction/ Personal Injury Prods. Liab. Litig.*, No. 4:22-md-03047-YGR (N.D. Cal. Apr. 3, 2024) (*see* Protocol Mot. at Ex. 3) (entering deposition protocol that, *inter alia*, provides that “[c]ounsel are expected to adhere to the Northern District of California Guidelines for Professional Conduct” and establishing rules for the use of hard copy and electronic exhibits); *In re Uber Technologies, Inc. Passenger Sexual Assault Litig.*, MDL No. 3084 CRB (N.D. Cal. Aug. 9, 2024) (Protocol Mot. at Ex. 4) (entering deposition protocol that requires, *inter alia*, counsel using exhibits “should have at least five (5) copies” of such exhibits to distribute to the witness, opposing counsel, and the court reporter, and incorporating the “Guidelines for

² In addition to these now withdrawn legal arguments, Plaintiffs contend that the Court should not decide State Farm's Protocol Motion until and unless it decides Plaintiffs' Motion for Sanctions. (*See* Mot. at 9.) But Plaintiffs specifically declined to argue their Motion for Sanctions at the July 24 hearing, thus waiving any argument that such motions are connected or should be heard and decided together. (*See* Ex. 1, Hrg. Tr. at pp. 99–102.) Even so, because the Court has already entered the Deposition Protocol, any argument that it should refrain from doing so is moot.

Professional Conduct, including those related to Discovery and Depositions, of the United States District Court, for the Northern District of California”); *United Food & Commercial Workers Union v. Chesapeake Energy Corp.*, No. CIV-09-1114-D, 2012 WL 3067438, at *1 (W.D. Okla. July 27, 2012) (establishing a deposition protocol after counsel’s allegedly improper behavior where opposing counsel requested such protocol “to prevent such conduct in future depositions.”).

Plaintiffs assert, in their Motion to Reconsider, that Oklahoma law “do[es] not support the [Protocol Order].” (Mot. at 3). But in their Supplemental Brief, Plaintiffs apparently withdraw such contention, claiming that they “do not ask the Court to revisit” entry of the Protocol other than as to “two paragraphs—(B)(4) and (C)(6).” (*See* Supp. Br. at 1.) Furthermore, Plaintiffs request in their Supplemental Brief that the Court use the same authority to “enter the Alternative Protocol attached as Exhibit A in place of the September 24, 2026 Protocol.” (*See id.* at 10.) Plaintiffs cannot simultaneously assert that § 3226 does not allow entry of a deposition protocol and demand the Court enter an Alternative Protocol which simply has provisions Plaintiffs like better.

Even assuming, counterfactually, that Plaintiffs continue to argue the Court’s purported lack of authority in the alternative, their Motion provides no support for this contention. Section 3226 explicitly allows the Court to enter “*any*” order regulating the discovery process. 12 O.S. § 3226; *see also* 12 O.S. § 3226.1 (providing that “a protective order may also be authorized on matters relating to a deposition”). This includes, but is not limited to, an order “that the discovery may be had only on specified terms and conditions” or that “the discovery may be had only by a method of discovery other than that selected by the party seeking discovery.” *See* 12 O.S. § 3226(C)(1)(b), (c). Plaintiffs do not explain why, if the Court has the authority to prevent a deposition altogether, or require that Plaintiffs take a deposition by written questions, it does not have the authority to govern counsel’s conduct at such deposition. Nor can they: numerous courts

have entered similar protocols that indeed, contrary to Plaintiffs’ assertions, “regulat[e] an examining lawyer’s tone or phrasing” and incorporate “professionalism standards as enforceable terms of a court order.” (*Cf.* Mot. at 4.)

For example, courts in the Northern District of California have entered deposition protocols requiring counsel to adhere to the Northern District’s “Guidelines for Professional Conduct,” which include edicts that counsel “should at all times be civil, courteous, and accurate in communicating with opponents or adversaries, whether in writing or orally;” that counsel’s “conduct in dealings with nonparty witnesses should exhibit the highest standards of civility and be designed to leave the witness with an appropriately good impression of the legal profession and the judicial system,” and that “[a] lawyer should always deal with parties, counsel, witnesses, jurors or prospective jurors, court personal, and the judge with courtesy and civility.” *See Social Media Adolescent Addiction/ Personal Injury Prods. Liab. Litig.*, No. 4:22-md-03047-YGR (N.D. Cal. Apr. 3, 2024) (*see* Protocol Mot. at Ex. 3); *In re Uber Technologies, Inc. Passenger Sexual Assault Litig.*, MDL No. 3084 CRB (N.D. Cal. Aug. 9, 2024) (Protocol Mot. at Ex. 4); *see also* Guidelines for Professional Conduct, Northern District of California.³ Plaintiffs do not even mention, let alone attempt to distinguish, this authority.⁴

³ Available at <https://northerndistrictpracticeprogram.org/wp-content/uploads/2019/01/Guidelines-For-Professional-Conduct--United-States-District-Court-Northern-District-of-California.pdf> (last accessed Oct. 5, 2026).

⁴ Plaintiffs mischaracterize and cherry-pick only a handful of the cases State Farm cited in its Protocol Motion, asserting that “[t]he decisions State Farm leans on do not support the order it seeks.” (*See* Mot. at 3.) But these arguments amount to nothing more than assertions that the orders entered in *Damaj v. Farmers Ins Co.*, 164 F.R.D. 559 (N.D. Okla. 1995); *Hall v. Clifton Precision*, 150 F.R.D. 535 (E.D. Pa. 1993); and *United Food & Commercial Workers Union v. Chesapeake Energy Corp.*, No. CIV-09-1114-D, 2012 WL 3067438 (W.D. Okla. July 27, 2012) do not contain exactly the same provisions as the Protocol here—not that the Court lacks authority to enter protocols governing an examining attorney’s deposition conduct. (*See* Mot. at 3–4.)

B. The OBA’s Standards of Professionalism May Be Incorporated in the Protocol.

There is also no merit to Plaintiffs’ argument that “[t]he Standards of Professionalism cannot be made enforceable by Court Order.” (*See* Mot. at 6–7.) As noted, Plaintiffs’ Supplemental Brief now requests that the Court enter an Alternative Protocol that requires counsel “to adhere to the Oklahoma Bar Association’s Standards of Professionalism” as well as the Local Rules—thus effectively withdrawing their contention that no such requirement is permitted. (*See* Supp. Br. at Ex. A, Alternative Proposal ¶¶ D(1), (2).) Regardless, Plaintiffs misconstrue the Standards when they assert that the OBA “forbids [their] use” in such protocols.

While the OBA cautions that the Standards of Professionalism “are not intended to be used as a basis for discipline by the Court on the Judiciary or the Professional Responsibility Tribunal,” there is no such cautionary language regarding their use in a deposition protocol. That is, the OBA’s Standards specifically caution as to their application to proceedings in the “Court on the Judiciary,” and the “Professional Responsibility Tribunal,” not district courts. Further, the Standards state that they are not “for establishing standards of conduct *in an action against a lawyer*” (emphasis added). This case in which the protocol is requested is not “an action against a lawyer.” Further, the Protocol incorporates these “aspirational” standards not because violation of them will result in “lawyer discipline,” (*see* Mot. at 6), but because they are well-established and consensus standards that Oklahoma lawyers should seek to emulate, and because Plaintiffs’ counsel’s conduct has demonstrated they are necessary requirements to protect State Farm’s witnesses from “annoyance, harassment, embarrassment, [and] oppression. . . .” 12 O.S. § 3226(C). Nothing within the Standards prevents parties and courts from using them as a model for deposition conduct, but Plaintiffs’ counsel’s refusal to agree to comply with these guidelines is telling.⁵

⁵ Notably, the Oklahoma Rules of Professional Conduct provide, *inter alia*, that “[i]n the course of representing a client a lawyer shall not knowingly . . . make a false statement of material fact or

C. Unlike Plaintiffs, State Farm Satisfied the Meet-and-Confer Requirement.

Finally, Plaintiffs’ assertion that State Farm “did not satisfy the conference requirement” necessary to obtain a protective order (*see* Mot. at 7–8) is both legally and factual wrong and even more remarkable since counsel didn’t even ask counsel for State Farm to confer before filing this Motion. Section 3226(C) requires a good faith *attempt* to meet and confer—it does not mandate that such meet-and-confer take place before a motion for protective order is filed. *See* 12 O.S. § 3226(C) (providing for a motion with a certification “that the movant has in good faith conferred *or attempted to confer*, either in person or by telephone, with other affected parties in an effort to resolve the dispute without court action.”) (emphasis added). Prior to filing its Protocol Motion, counsel for State Farm attempted to confer in good faith with Plaintiffs’ counsel regarding the proposed Deposition Protocol. State Farm’s counsel provided a copy of the Protocol to Plaintiffs’ counsel on Friday, July 24, noted that due to the time-sensitive nature of this Motion, State Farm was intending to file the Motion on Monday, July 27, and requested that Plaintiffs’ counsel meet and confer telephonically on Friday. Plaintiffs’ counsel, however, refused to make themselves available to meet or confer regarding the Protocol until Wednesday, July 29.⁶ Because more

law to a third person.” *See* Okla. Rules of Prof. Conduct 4.1(a). The Protocol accordingly requires that counsel “may not misrepresent to a deponent that any rules, law, or any other authority prevent the deponent from clarifying an answer to a pending or prior question,” “misrepresent to a deponent that any rules, law, or any other authority prevent the deponent from asking for clarification of a pending question,” or misrepresent “to the deponent that any rules, law, or other authority require the deponent to answer a question in a particular way or to only use certain words when answering the question.” (*See* Deposition Protocol ¶¶ C(1), C(4), C(5).) These are not simply “aspirational” standards under the OBA’s Standards of Professionalism, but rules of professional conduct whose violation can subject a lawyer to discipline. *See* Okla. Rules of Prof. Conduct § 1.5 (adopting the Rules of Professional Conduct as “the standard of professional conduct of all lawyers,” and providing that “[a]ny lawyer violating these Rules of Professional Conduct shall be subject to discipline, as herein provided”).

⁶ Despite representing that they were unavailable to meet and confer between Friday, July 27 and Wednesday, July 29, Plaintiffs’ counsel apparently had sufficient time to draft and file an eight-

executive depositions were ordered by the Court on July 27, State Farm advised counsel it was proceeding with the filing of the Motion it remained willing to confer to reach agreement on an appropriate protocol. They made plain that no protocol was acceptable.

In contrast, before filing their Supplemental Brief, which contains a request for the Court to enter an “Alternative” deposition protocol, Plaintiffs’ counsel did not even *attempt* to communicate with or meet-and-confer with State Farm’s counsel. State Farm thus understands that Plaintiffs are withdrawing any remaining argument that State Farm was required to perform any additional tasks before filing its Protocol Motion. Regardless, State Farm satisfied the conference requirement—and Plaintiffs’ counsel’s apparently strategic refusal to confer cannot prevent State Farm from obtaining relief from the Court on its motion.

II. PARAGRAPHS B(4) AND C(6) PROPERLY CREATE AN EVIDENTIARY PRESUMPTION TO ENFORCE THE PROTOCOL’S STANDARDS.

Plaintiffs’ remaining objections to the Protocol center on paragraphs B(4) and C(6), which merely provide that violations of the Protocol will be *prima facie* evidence that a deposition is being conducted in bad faith under 12 O.S. § 3230(E)(2).⁷ Plaintiffs mischaracterize these provisions as allowing “any remaining deposition [to] be halted on an assertion of discourtesy.”

page Motion for Discovery Sanctions (along with over 150 pages of exhibits) against State Farm on July 28.

⁷ Plaintiffs also, in their Motion, take issue with the requirement that—if *and only if* they refuse to provide hard copies of exhibits to State Farm and the witness at a deposition, they identify such documents at least 24 hours before the deposition (to provide Defendants’ counsel sufficient time to obtain and prepare their own copies). (See Mot. at 5, citing Deposition Protocol ¶ D(3).) Plaintiffs mischaracterize that provision as “requir [ing] Plaintiffs to identify by Bates number, or produce an electronic copy of, every voluminous document counsel intends to use, at least twenty-four hours before the deposition, on pain of preclusion.” (See Mot. at 5.) In fact, the provision only applies to electronic documents *that counsel chooses not to provide to opposing counsel or the deponent in hard copy at the deposition*. (See Deposition Protocol ¶¶ D(2), D(3), D(4).) Such provision is necessary to prevent the very sort of gamesmanship that occurred at Ms. Manduca’s deposition, where Plaintiffs’ counsel excerpted portions of electronic documents as exhibits and refused to provide complete copies to State Farm’s counsel or the deponent.

(*See* Mot. at 4; *see also* Supp. Br. at 3–4 (arguing that the provisions allow “suspension on demand” for “subjective standards”).) But paragraphs B(4) and C(6) do not substantively alter the existing law regarding the termination and suspension of depositions—rather, they create a rebuttable evidentiary presumption that is necessary to ensure counsel’s compliance with the applicable standards of civility and decorum.

This Court remedied any purported concern here by adding to the Protocol that the depositions could not be suspended on this ground without permission of the Court. *See* Court Exhibit 1 to September 25 Order. That has resolved all complaints the Plaintiffs can have.

Further, 12 O.S. § 3230(E)(2) *already* provides what Plaintiffs deride as “suspension on demand” pursuant to “subjective standards.” Under that Section, “[a]t any time during the taking of a deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass or oppress the deponent or party, the court in which the action is pending . . . may order the officer conducting the examination to cease taking the deposition, or may limit the scope and manner of the taking of the deposition.” The statute does not define “bad faith,” nor what it means to “unreasonably annoy, embarrass, or oppress the deponent.” Moreover, “[u]pon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for the order provided for in this section.” *Id.* Thus, under the applicable statutory framework, a party is entitled to suspend a deposition upon motion alleging “bad faith” or “harassment,” and the court is required to evaluate the conduct of opposing counsel to determine whether it violates these undefined “subjective standards.”

In addition to the safeguards the Court imposed by requiring consultation with the Court, the statute also already provides important safeguards to prevent frivolous motions to terminate a

deposition. For example, a motion to terminate must be made while the deposition is pending—the deposition cannot be unilaterally halted under Section 3230(E)(2) simply because a party intends to file a motion at some unidentified future time. *See, e.g., Pipeline Prods., Inc. v. Madison Companies, LLC*, No. 15-4890-KHV, 2018 WL 3416295, at *2–3 (D. Kan. June 13, 2018) (finding that attorney’s action in unilaterally terminating a deposition under Federal Rule of Civil Procedure 30(d)(3)⁸ was improper because “counsel had an obligation” to make a motion under the rule “before he unilaterally terminated the deposition.”)⁹ And the statute makes clear that a party can be assessed costs and attorneys’ fees if such motion is frivolously filed to “frustrate[] the fair examination of the deponent.” *See* 12 O.S. § 32330(E)(1).

Further, courts considering a motion to suspend a deposition for bad faith *already* consider the “subjective” “tone and degree” of counsel’s questioning (*see* Supp. Br. at 4) in determining bad faith. Courts have found a deposition to be harassing and in bad faith where examining counsel asked irrelevant questions¹⁰ and where counsel “baldly sought to use the guise of a [corporate] deposition to try to force a non-designated expert to embrace the trial opinions expressed by the

⁸ Section 3230(E)(2) is substantively identical to Federal Rule of Civil Procedure 30(d)(3). As such, because “[t]he Oklahoma Discovery Code mirrors the Federal rules,” *Meritor, Inc. v. State ex rel. Bd. of Regents of Univ. of Okla.*, 2019 OK CIV APP 64, 451 P.3d 914, 922 n.15, Oklahoma courts often look to “discovery procedures in the federal rules when construing similar language in the Oklahoma Discovery Code,” *Crest Infiniti, II, LP v. Swinton*, 2007 OK 77, ¶ 2, 174 P.3d 996, 999.

⁹ *See also In re Omeprazole Patent Litig.*, 227 F.R.D. 227, 230 (S.D.N.Y. 2005) (“It is not the prerogative of counsel, but of the court, to rule on objections. . . . [I]f the plaintiff’s attorney believed that the examination was being conducted in bad faith . . . or that the deponents were being needlessly annoyed, embarrassed, or oppressed, he should have halted the examination and applied immediately to the ex parte judge for a ruling on the questions, or for a protective order, pursuant to Rule 30(d).”)

¹⁰ *See, e.g., Pipeline Prods., Inc.*, 2018 WL 3416295, at *2 (finding deposition questions improper where plaintiffs “focused nearly exclusively on the assets of defendants” which were not at issue).

parties' own designated experts.”¹¹ Further, where a party alleged that the opposing attorney conducted himself in a “rude, harassing, unprofessional [and] abusive manner,” including by “yell[ing] at the witness,” the court “reviewed the video tape of the deposition in its entirety” to evaluate such allegations.¹² Regardless whether the Protocol is in place, State Farm has the right to move for termination of a deposition under § 3230(E)(2) if Plaintiffs’ counsel’s tone and manner of questioning is in bad faith or to harass, and regardless whether the Protocol controls the court could consider Plaintiffs’ counsel “tone” when evaluating such motion.

In sum, Plaintiffs’ primary concerns as to paragraphs B(4) and C(6) are in fact with § 3230(E)(2), not with the evidentiary presumptions of those paragraphs. Those presumptions *reduce* the likelihood of additional disputes because they make clear what sort of misbehavior will qualify as evidence of bad faith and harassing conduct under § 3230(E)(2).

Plaintiffs also seem to suggest, wrongly, that once such *prima facie* evidentiary presumption has been presented Plaintiffs will be unable to rebut it. (*See, e.g.*, Mot. at 4 (arguing that “any remaining deposition can be halted on an assertion of discourtesy”).) That is not the law, nor is it part of the Deposition Protocol. The Court, pursuant to § 3230(E)(2), will be the final arbiter of whether deposition conduct violates the Protocol or is sufficient to terminate a deposition under Section 3230(E)(2).¹³ Plaintiffs’ parade of horrors as to paragraphs B(4) and C(6) are red

¹¹ *See U.S. ex rel. Tiesinga v. Dianon Sys., Inc.*, 240 F.R.D. 40, 43 (D. Conn. 2006).

¹² *See Fondren v. Republic Am. Life Ins. Co.*, 190 F.R.D. 597, 600–01 (N.D. Okla. 1999).

¹³ In their Supplemental Brief, Plaintiffs also erroneously suggest that State Farm will “apply Paragraph B(4)” to regulate “ordinary statements examining counsel make when a witness does not answer.” (*See* Supp. Br. at 6–7.) Plaintiffs’ counsel appears to be under the misconception that because the law allows a party to move for sanctions, it also necessarily allows counsel to threaten a deponent with sanctions (or threaten that counsel will request relief from the Court) whenever the deponent fails to agree with counsel’s theory of the case. (*See id.*) But “[t]hreatening sanctions casually or as a matter of course has no place among officers of the court—again, except in the most egregious cases and then, only as a last resort.” *Harrison Prosthetic Cradle Inc. v. Roe Dental Lab., Inc.*, 608 F. Supp. 3d 541, 551 (N.D. Ohio 2022) (emphasis added); *see also Rush v.*

herrings: nothing about those paragraphs creates new law or allows State Farm to file frivolous motions to delay depositions. There is no reason to amend the Protocol to eliminate those provisions—especially when Plaintiffs have announced their intent to treat the OBA’s Standards of Professionalism as merely “aspirational.”

III. PLAINTIFFS’ SELF-SERVING “ALTERNATIVE PROTOCOL” IS UNNECESSARY, DELIBERATELY UNDERMINES THE COURT’S DEPOSITION PROTOCOL, AND IS EFFECTIVELY MOOT.

Finally, there is no reason whatsoever to amend the Protocol at the eleventh hour and enter Plaintiffs’ belated Alternative Protocol. For one, most of the added provisions in the Alternative Protocol serve no purpose other than to restate existing law that will govern the remaining depositions in this case regardless. But Plaintiffs have chosen to surreptitiously insert several self-serving provisions that directly undermine the Protocol’s aims and seek to condone the very bad behavior that forced State Farm to seek entry of the Deposition Protocol.

For example, Plaintiffs’ Alternative Protocol inserts paragraph C(8), which provides that “no attorney or party shall direct the videographer as to the method of operating the recording equipment” and “[n]o person other than the court reporter and the designated videographer shall record a deposition by any means.” (*See* Supp. Br. at Ex. A, Alternative Proposal ¶ C(8).) This appears to be in response to State Farm’s request, at a recent deposition that a second videographer attend to record the entirety of the room and Plaintiffs’ counsel’s demeanor during the deposition. This sort of requirement—which deliberately is structured to prevent State Farm from obtaining evidence of Plaintiffs’ counsel’s misconduct during further depositions—is not supported by the Rules, and in fact encourages the same sort of misconduct and incivility Plaintiffs’ counsel

McDonald’s Corp., 966 F.2d 1104, 1123 (7th Cir. 1992) (“It is our view that sanctions, or even the threat of sanctions, should not be used as a means of bullying a weaker opponent.”). Such behavior is not “ordinary,” nor is it proper to use the availability of a sanctions remedy as a means to coerce a deponent into changing her testimony.

exhibited in Ms. Manduca's deposition, when counsel was well aware that his threatening facial expressions and gestures would not be recorded by the single videographer. Plaintiffs do not, and cannot, support use of such a provision so obviously intended to hide counsel's misconduct from the Court and the public.

What is worse, Plaintiffs' Alternative Protocol not only eliminates the evidentiary presumptions, it implements an *opposite presumption*—adding that “[a] departure from the Standards of Professionalism, the Local Rules, or Paragraphs D(1)–(4) or E(1)–(9) of this Order is not, by itself, evidence that a deposition is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or a party, and its not, by itself, a basis for suspending or terminating a deposition.” (*See* Supp. Br. at Ex. A, Alternative Protocol ¶ D(5).) Plaintiffs' Alternative Protocol likewise authorizes counsel to threaten a deponent with sanctions simply for not agreeing with counsel's theory of the case—providing that “[a] statement by counsel on the record that counsel intends to seek relief the Oklahoma Discovery Code authorizes—including a motion to compel an answer, a request for additional time under 12 O.S. § 3230(A)(3), a request that a deposition proceed in the presence of the Court, or a motion for sanctions—is not a threatening statement . . . and is not, by itself, a basis for a motion under 12 O.S. § 3230(E)(2).” (*Id.* at ¶ D(6). Tellingly, that quote omits the word “sanctions” which was repeatedly used at the deposition to intimidate the witness. Further, Plaintiffs cite no law supporting these extraordinary provisions, which would completely prevent State Farm from seeking relief under Section 3230(E)(2) even if Plaintiffs' counsel shouts at a deponent and threatens that counsel will seek sanctions unless the deponent changes their answer to agree with counsel's theory of the case. This is not an Alternative Protocol that “carries forward the Court's provisions” from the existing

Protocol (*see* Supp. Br. at 1)—it is a self-serving attempt to condone and immunize their counsel’s bad behavior from all consequence.

These and other self-serving provisions also suggest that Plaintiffs’ primary motivation is not the current case in which one four-hour deposition along with expert depositions are remaining, but other cases and the press. Indeed, Plaintiffs admit they are “[c]ritically” concerned about “what an order entered here will be used for elsewhere,” (*see* Mot. at 2), *i.e.*, that their counsel’s misconduct might be cited by State Farm in other proceedings.¹⁴ But what happens in those other proceedings, and what consequences counsel’s own misconduct has as to those proceedings, should not and cannot be a reason to remove the only provisions in the Protocol that provide an incentive for Plaintiffs’ counsel to remain civil in depositions of State Farm witnesses.

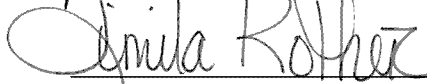
Finally, and in any event, the Alternative Protocol, like Plaintiffs’ Motion to Reconsider, is effectively moot. The Court has set a hearing on Plaintiffs’ Motion for October 12, 2026. By that date, the only remaining depositions to be taken in this case are those of State Farm’s CEO, John Farney, and experts. In the hope that this is not signaling some intended misconduct in the deposition of Mr. Farney, this limited number of depositions just does not warrant a change in the Protocol which this Court has already considered and ordered. But assuming there is no additional motion practice arising from those depositions, Plaintiffs’ imagined specter of “more motions” and endless “satellite litigation” regarding depositions (*see* Mot. at 8) will be proven false, and the Court should thus deny Plaintiffs’ request for an unworkable and self-serving Alternative Protocol.

¹⁴ Here again the double standard is remarkable. As soon as this Court de-designated documents that Plaintiffs’ counsel claim evidence a scheme (they do not), counsel fabricated a way to get them in the public record immediately by attaching them to a response brief to which the documents were immaterial and which counsel for Plaintiffs filed, completely out of character, a week early. State Farm has attempted no such exhibition of this Motion.

CONCLUSION

For the foregoing reasons, Plaintiffs' Motion to Reconsider the Court's Deposition Protocol should be denied. The Court should likewise reject Plaintiffs' belated and improper attempt to implement a self-serving Alternative Protocol or edit the existing Protocol to retroactively condone Mr. Whitten's misconduct at Ms. Manduca's deposition.

Respectfully submitted,



TIMILA S. ROTHER, OBA #14310

PAIGE A. MASTERS, OBA #31142

AMANDA M. FINCH, OBA #34650

CROWE DUNLEVY

Braniff Building

324 North Robinson Avenue, Suite 100

Oklahoma City, Oklahoma 73102

(405) 235-7700

timila.rother@crowedunlevy.com

paige.masters@crowedunlevy.com

amanda.finch@crowedunlevy.com

ATTORNEYS FOR DEFENDANT STATE

FARM FIRE AND CASUALTY COMPANY

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing was served by U.S. Mail, postage prepaid, this 8th day of October 2026, to:

Reggie N. Whitten

Michael Burrage

Blake Sonne

Hannah Whitten

John S. Sanders

Jake Denne

WHITTEN BURRAGE

512 North Broadway Avenue, Suite 300

Oklahoma City, Oklahoma 73102

Brad W. Burgess

Colby A. Stephenson

BURGESS & HIGHTOWER LAW FIRM

21 NW 4th Street, Suite 201

Lawton, Oklahoma 73505

R. Ryan Deligans

DURBIN, LARIMORE & BIALICK

920 North Harvey

Oklahoma City, Oklahoma 73102

