



FILED IN DISTRICT COURT
OKLAHOMA COUNTY

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

AUG 25 2026

BILLY & LACY HURSH,

Plaintiffs,

v.

STATE FARM FIRE & CASUALTY
COMPANY, MARK D. WELTY, and MARK D.
WELTY INSURANCE AGENCY, INC.,

Defendants.

RICK WARREN
COURT CLERK

36

Case No. CJ-2025-2626

**DEFENDANT STATE FARM FIRE AND CASUALTY COMPANY'S
REPLY IN SUPPORT OF MOTION FOR ENTRY OF A PROTECTIVE ORDER AND
DEPOSITION PROTOCOL GOVERNING COUNSEL'S CONDUCT AT DEPOSITIONS**

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Plaintiffs' Response to State Farm's Motion for Deposition Protocol is devoid of substance. Plaintiffs cite no case, statute, rule, or other authority barring the Court from entering State Farm's proposed Deposition Protocol as written. They do not address the Protocol's provisions at all. Nor do they seriously argue that Mr. Whitten's behavior at Ms. Manduca's deposition in *West* was appropriate; instead, they contend counsel's conduct was justified because Ms. Manduca was a "hostile and unresponsive witness." (See Pls.' Resp. at 1.) But neither the Local Rules nor the Oklahoma Bar Association's Standards of Professionalism excuse violations based on a witness's alleged unresponsiveness. Plaintiffs' continued, misguided effort to justify their counsel's misconduct only confirms why the Protocol is necessary.

I. THERE IS NO JUSTIFICATION FOR COUNSEL'S MISCONDUCT.

As an initial matter, there is no justification for Plaintiffs' counsel's misconduct at Ms. Manduca's deposition. In its Protocol Motion, State Farm identified numerous examples of that misconduct—quoting directly from the deposition transcript. No "context" permits such behavior; and neither Local Rule 28 nor the Standards of Professionalism allow a questioning attorney to interrupt or shout at a witness, threaten a witness, accuse a witness of lying for disagreeing with counsel's theory of the case, and prevent a witness from providing context for her answers. The deposition transcript, which State Farm submitted with its Protocol Motion, speaks for itself. Plaintiffs' failure to address the specific misconduct State Farm quoted in its motion is telling. (And, to the extent Plaintiffs believe the quoted excerpts do not accurately depict counsel's demeanor, they are free to submit video excerpts to the Court).

Having no argument that Mr. Whitten's deposition behavior was proper, Plaintiffs suggest that his conduct was justified because Ms. Manduca was "unresponsive." But Plaintiffs have not identified—and cannot identify—a single question that Ms. Manduca failed to answer. Plaintiffs' three purported examples of Ms. Manduca's "unresponsive[ness]" omit context showing that she

properly answered each question.¹ In any event, Plaintiffs' continued insistence that their counsel's misconduct was somehow "justified" only underscores the necessity of a Protocol to prevent further disputes over counsel's conduct in any additional depositions in this matter.

II. STATE FARM IS NOT REQUIRED TO FILE A BAR COMPLAINT OR MOVE FOR SANCTIONS BEFORE REQUESTING A PROTOCOL.

Plaintiffs' "legal" argument—that State Farm cannot ask the Court to enter a Deposition Protocol unless it first files a bar complaint or moves for sanctions against Plaintiffs' counsel (*see* Pls.' Resp. at 10–13)—is baseless. Plaintiffs cite no authority requiring State Farm to pursue either course before seeking a protocol to govern depositions. Nor is there any authority preventing a party from alerting the Court about deposition misconduct before seeking sanctions.²

¹ Plaintiffs provide only three examples of questions Ms. Manduca purportedly failed to answer—none of which is accurate. *First*, Plaintiffs incorrectly assert that Ms. Manduca failed to answer whether "State Farm cannot lower claims before they happen." (Pls.' Resp. at 6, citing N. Manduca Dep. Tr. at 106:18–25.) Such question is an improper hypothetical question to a lay witness, and no answer was required. Regardless, Plaintiffs omit that upon follow-up questioning, Ms. Manduca confirmed that "[State Farm] cannot operate in that manner." (See Protocol Motion at Ex. 2, N. Manduca Dep. Tr. at 108:1–109:3.) *Second*, Plaintiffs point to a question from counsel regarding whether Ms. Manduca wrote explanatory information in an email. (See Pls.' Resp. at 6–7, citing Dep. Tr. at 275:12–15.) To be sure, the email (which Plaintiffs' counsel used as an exhibit) speaks for itself, and a question about what is or is not written in the email is completely unnecessary. But again, Ms. Manduca answered the question—in the very next follow-up question, in which Plaintiffs' counsel asked Ms. Manduca to confirm that "[t]he context is not written on the page." Ms. Manduca responded, "It's not written on the page that our claim volume was down and the severity of that claim volume was lower." (See Protocol Motion at Ex. 2, N. Manduca Dep. Tr. at 275:16–23.) *Third*, Plaintiffs point to an example of one (of many questions) at the deposition in which Plaintiffs' counsel insisted, wrongly, that Ms. Manduca was required to answer a compound, vague, and confusing question with a "yes or no" answer. (See Pls.' Resp. at 7, citing Dep. Tr. at 327:13–16.) Tellingly, Plaintiffs omit the full question—which is compound, vague, and confusing—but in any event, any cognizable question was already asked and answered. Moreover, counsel's prior question demanded that Ms. Manduca confirm whether the email in question "doesn't say anything about claim volume went down," and Ms. Manduca answered, "It does not state that there." (Protocol Motion at Ex. 2, N. Manduca Dep. Tr. at 326:17–24.)

² Ironically, in the very brief in which Plaintiffs insist on such a prerequisite, they accuse State Farm's counsel of misconduct in other depositions (although neither they nor any other plaintiff has moved for sanctions or filed any bar complaint against State Farm's counsel for such alleged misconduct). (*See* Pls.' Resp. at 13–15.) If, as Plaintiffs insist, a party cannot allege attorney

At base, Plaintiffs contend that because other options are available to State Farm to address counsel's misconduct, State Farm cannot request a deposition protocol. That is not the law. Pursuant to 12 O.S. § 3226(C), 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. There is no requirement that a protective order must first be justified by a violation of the Code: indeed, if that were the case, no court could enter an order protecting a defendant's trade secrets until the plaintiff affirmatively disclosed the critical information to a competitor; or an order protecting a third-party's personal identifying information until a party disseminated it to reporters.

A motion for sanctions, like a bar complaint, is a separate *post hoc* procedure for addressing misconduct—it does not prevent the Court from adopting well-settled procedures to avoid such harm before it occurs. That is why courts across the country, applying the analogous Federal Rules of Civil Procedure,³ have entered similar deposition protocols—especially in high-profile cases like this one. (See Protocol Motion at 11–12.)

Despite Plaintiffs' overwrought rhetoric, there is nothing “self-serving” or “prejudicial” about the proposed Protocol. (See Pls.' Resp. at 2.) State Farm seeks a protective order and deposition protocol—rather than sanctions or a bar complaint—to lower the already heated

misconduct before filing a bar complaint or motion for sanctions, the Court should strike the Response for that very reason.

³ Because “[t]he Oklahoma Discovery Code mirrors the Federal rules,” *Meritor, Inc. v. State ex rel. Bd. of Regents of Univ. of Oklahoma*, 2019 OK CIV APP 64, ¶ 20 n.15, 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.

temperature Ms. Manduca's deposition created and avoid further disputes over counsel's conduct. Like protocols that courts across the country have entered, the proposed Protocol simply requires counsel to comply with existing law governing witness questioning, deposition instructions, and the use of exhibits. Plaintiffs' apparent belief that those requirements somehow advantage State Farm only confirms why the Protocol is necessary.⁴

III. PLAINTIFFS' UNSUPPORTED ACCUSATIONS OF MISCONDUCT AT OTHER DEPOSITIONS FURTHER SUPPORT ENTRY OF A DEPOSITION PROTOCOL.

Plaintiffs also argue that any protocol would be "pointless" because State Farm's counsel purportedly committed "blatant violations" of the Protocol in other depositions in other cases. That argument makes no sense. The proposed Protocol would bind *all* counsel, including State Farm's. If Plaintiffs believe State Farm's counsel violated the Local Rules or the Bar's Standards of Professionalism in other cases, they should have (1) objected to the purportedly improper questions at those depositions; and (2) raised those issues in the proper course. That they failed to do so until their own counsel was accused of misconduct is telling. In any event, Plaintiffs' accusations only reinforce the need for a Protocol here: if further disputes over counsel's conduct at depositions are likely, the Court should enter clear rules governing all counsel—rules State Farm's counsel is prepared to follow.

Moreover, a closer look at the conduct Plaintiffs contend "blatantly violates" the Protocol reveals their attempt to manufacture an excuse for Mr. Whitten's behavior:

- Plaintiffs accuse State Farm's counsel of "inappropriate and harassing deposition conduct" in

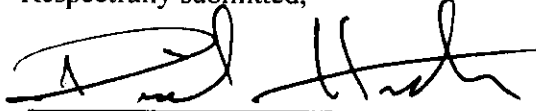
⁴ State Farm does not object to Plaintiffs' request that depositions of State Farm witnesses "occur in the presence of [the Court]" (*see* Mot. at 12); but such "alternative" proposal does not address one of the primary issues here—Plaintiffs' counsel's improper refusal to provide copies of exhibits to the deponent and to State Farm's counsel. (*See* Protocol Motion at 17–20.) Thus, State Farm respectfully submits that entry of the Protocol is necessary regardless of a deposition's location.

the *Lorraine Hall* case because counsel, “after being charged with bullying,” asked the deponent whether she believed she was being “bullied.” (*See* Pls.’ Resp. at 14.) Plaintiffs, however, omit that the deponent *could not identify a single example of the supposed “bullying” by State Farm’s counsel.* (*See, e.g., id.* at Ex. 3, Tr. at 214:8–18 (“Q. Are you alleging that I asked you the same question multiple times? A. Yes. Q. Which question did I ask you multiple times? A. I can’t pinpoint that.”).) Nor do Plaintiffs do so here—as in the deposition, they make baseless accusations that do not comport with the record.

- Plaintiffs accuse State Farm’s counsel of pursuing “intrusive lines of questioning” at the plaintiff’s deposition in *West* (*see* Pls.’ Resp. at 13) but they omit that counsel legitimately asked a question—*without objection from Plaintiffs’ counsel*—about whether Plaintiffs spent thousands of dollars on a Caribbean cruise while allegedly struggling with debt. (*See id.* at Ex. 4, Tr. at 209:25–210:14.)
- Finally, Plaintiffs accuse State Farm’s counsel of “rude and intentional interruption” of the plaintiff in the *Slater-Martin* case. (*See* Pls.’ Resp. at 13). But the transcript shows that State Farm’s counsel merely stated “okay” while the plaintiff was speaking—at which point plaintiff’s counsel launched into a diatribe about “interrupting.” (*See id.* at Ex. 5, Tr. at 106:18–25.) This brief “interruption” pales in comparison to Mr. Whitten’s intentional and repeated conduct.

In any event, a simple comparison of these “blatant violations” with Mr. Whitten’s conduct only underscores the unprecedented nature of Plaintiffs’ counsel behavior—and the necessity of clear rules to govern the behavior of counsel at any further depositions in this matter. State Farm thus respectfully requests that the Court grant the Protocol Motion and enter the proposed Protocol.

Respectfully submitted,



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CERTIFICATE OF MAILING

I do hereby certify that on August 25, 2026, a true, correct and exact copy of the above and foregoing document was served via email and by placing same in the United States mail, with proper postage thereon duly prepaid, to those parties as listed below:

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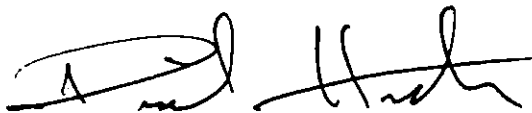
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