

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BENJAMIN AUSLANDER,	:	No: 2:22-cv-01425-HB
Plaintiff,	:	
v.	:	
TREDYFFRIN/EASTTOWN SCHOOL	:	
DISTRICT, et. al,	:	
Defendants.	:	

MOTION FOR A PROTECTIVE ORDER UNDER FED. R. CIV. P. 30(d)(3)

Fed. R. Civ. P. 30(d)(3) permits a party “at any time during a deposition ... [to] move to terminate or limit it on the ground that it is being conducted in bad faith, or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party.” Plaintiff moves for a protective order under Fed. R. Civ. P. 30(d)(3) to terminate or limit the deposition of plaintiff, Benjamin Auslander, because the deposition is being conducted in bad-faith and to unreasonably annoy, embarrass, and oppress Auslander.

To begin the deposition and before any questions were asked, counsel for the school district defendants, Brian Elias, engaged in an on the record argument with counsel for Pacific Educational Group that included several *ad hominem* attacks direct to him. Attorney Elias’ obstreperous behavior continued with his questioning of the witness, Auslander. Attorney Elias was unnecessarily aggressive with the witness, he repeatedly interrupted the witness and would not permit him to answer, he was combative with both undersigned counsel and counsel for Pacific Educational Group when an objection was raised, he made repeated additional *ad hominem*

remarks directed to both undersigned counsel and counsel for defendant, Pacific Educational Group, during the deposition, and he repeatedly requested to see Auslander's cell phone.¹ In sum, Attorney Elias' conduct was unprofessional and it was clear that his intention was not to seek relevant factual information from the witness. Undersigned counsel repeatedly warned Attorney Elias that he would suspend the deposition to seek a protective order under Rule 30(d)(3). After the fourth warning, he did.

Plaintiff has requested expedited copies of the deposition transcript and deposition video for the Court's review. The Court's review of that video and transcript will be conclusive - Attorney Elias' conduct was in bad faith and was intended to annoy, oppress, and harass the witness. Undersigned counsel expects to have the transcript and video tomorrow and will supplement this motion with a memorandum of law in support of it based on the contents of both.

Undersigned counsel understands the gravity of suspending a deposition to seek a protective order under Rule 30(d)(3). Indeed, in over 20 years of litigation practice, which has included 100's of depositions, undersigned counsel has never needed to suspend a deposition to seek a protective order – until today.

¹ This is by no means the totality of Attorney Elias' conduct all of which is contained in the forthcoming transcript and video.

Respectfully submitted,

Dated: August 25, 2022

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