

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 15-05903-DDP (JEMx)	Date	April 27, 2016
Title	United States of America v. County of Los Angeles, et al.		

Present: The Honorable	John E. McDermott, United States Magistrate Judge
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S. Anthony

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Proceedings: (IN CHAMBERS) ORDER RE PLAINTIFF-INTERVENORS' MOTION TO COMPEL DEPOSITION OF DR. MITCHELL KATZ (Docket No. 93)

Before the Court is Plaintiff-Intervenors' Motion to Compel Deposition of Dr. Mitchell Katz ("Motion"), the Director of the Los Angeles County Health Agency. (Dkt. # 93.) The Motion is GRANTED in part and DENIED in part.

Background

On August 5, 2015, the U.S. Dept. of Justice filed a complaint against the County of Los Angeles and Los Angeles County Sheriff Jim McDonnell (collectively "LAC") pursuant to the Civil Rights of Institutionalized Persons Act of 1980, 42 U.S.C. § 1997 and the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141. (Dkt. # 1.) The complaint alleged violations of the Eighth and Fourteenth Amendments of the U.S. Constitution regarding mental health care for inmates at County jails. Also on August 5, 2015, the parties filed a Stipulation of Settlement. (Dkt. # 4.) On September 3, 2015, the District Court approved the Settlement Agreement. (Dkt. # 13.)

On September 28, 2015, Plaintiff-Intervenors filed a Motion to Intervene, challenging Paragraph 34 of the Settlement Agreement concerning mental health services provided to inmates during the discharge planning process. (Dkt. # 17.) On December 15, 2015, the District Court granted the Motion to Intervene. (Dkt. # 75.) On January 14, 2016, Plaintiff-Intervenors filed a First Complaint in Intervention (Dkt. # 76), alleging that Paragraph 34 violates the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12132, Section 504 of the Rehabilitation Act, 29 U.S.C. 794 and the Eighth and Fourteenth Amendments to the U.S. Constitution.

On February 23, 2016, Plaintiff-Intervenors noticed the deposition of Dr. Katz, Director of the County Health Agency, which includes the Department of Mental Health and the new Office of Diversion and Reentry. The County declined to produce Dr. Katz, asserting he is an "apex" high level

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official or executive who typically need not appear, absent special circumstances. Coleman v. Schwarzenegger, 2008 WL 4300437*2 (E.D. Cal.); Affinity Labs of Texas v. Apple, Inc., 2011 WL 1753982*15 (N.D. Cal.). On April 12, 2016, the parties filed the Joint Stipulation required by Local Rule 37 (Dkt. # 94-1.) On April 19, 2016, Plaintiff-Intervenors filed a supplemental memorandum. (Dkt. # 95.) The County did not.

Analysis

Dr. Katz was appointed to his position effective November 24, 2015, according to his Declaration. This was after the Settlement Agreement was reached, filed and approved. Dr. Katz' Declaration states that he was not employed by LAC during the negotiation of the Settlement Agreement, nor involved in the negotiation. He claims to have no direct involvement in the County's implementation of Paragraph 34.

Were these the only facts, the Court would enforce the apex doctrine as to Dr. Katz, at least to the extent of requiring other discovery first. His comments to Plaintiff-Intervenors' counsel Mark Rosenbaum, however, compel a different analysis and result, in part. Mr. Rosenbaum's Declaration indicated he had a conversation with Dr. Katz on February 5, 2015 in which Dr. Katz apparently stated that certain discharge planning practices as described to him by Mr. Rosenbaum were "entirely improper." He also expressed "great concern" about what would happen to inmates released if the practices described to him by Mr. Rosenbaum were followed.

The County asserts that Rosenbaum's conversation was an unethical *ex-parte* communication in violation of California Rule of Professional Conduct 2-100. Plaintiff-Intervenors, however, note that contact with public officials is an exception to the general rule under Rule 2-100(C)(1). Mr. Rosenbaum's conversation with Dr. Katz was not an ethical violation. Mr. Rosenbaum disclosed who he was to Dr. Katz and that he was counsel in this case. According to Rosenbaum, Dr. Katz chose to discuss the discharge planning practices at issue in this suit. There was no dishonesty, deception or coercion.

Dr. Katz' rather conclusory statement in his Declaration that he is not involved in the implementation of Paragraph 34 misses the point. He purportedly expressed an opinion that may be inconsistent with the County's position on Paragraph 34. His opinion is unique and personal to him and that no one else can provide. In a glaring omission, Dr. Katz' Declaration does not mention the conversation with Mr. Rosenbaum or deny it took place or dispute Mr. Rosenbaum's description of the conversation. Although Mr. Rosenbaum's description of the mental health discharge planning practices that Dr. Katz said were "entirely improper" is not specific and Dr. Katz may not recall the conversation the same way, Plaintiff-Intervenors are entitled to attempt to document for the record the opinion attributed to Dr. Katz. If the opinion is as represented by Mr. Rosenbaum, then it may have some probative value that no other County employee can provide.

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Thus, the Court will permit a two hour deposition of Dr. Katz limited to mental health discharge practices relevant to Paragraph 34 of the Settlement Agreement that Dr. Katz purportedly opined were “entirely improper.”

The Court, however, will enforce the apex doctrine as to all other inquiry. Dr. Katz’ Declaration abjures specific involvement in the implementation of Paragraph 34. His public comments are too general and not specific enough about Paragraph 34 to justify inquiry.

cc: Parties

Initials of Deputy Clerk

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