

STATE OF NEW HAMPSHIRE

STRAFFORD COUNTY, SS

SUPERIOR COURT

Docket No. 219-2011-CV-00349

David K. Taylor

v.

The Oyster River Cooperative School Board and Henry Brackett, Chairman

**MOTION FOR PROTECTIVE ORDER AND REQUEST  
FOR EXPEDITED HEARING**

NOW COME the defendants, The Oyster River Cooperative School Board, and Henry Brackett, by their attorneys, Wiggin & Nourie, P.A., and submit the following Motion for Protective Order and Request for Expedited Hearing, whereby the defendants seek an order (a) barring the petitioner from taking additional depositions while petitioner's motion to amend the Petition is pending; (b) compelling the petitioner to produce a copy of the transcript of the deposition of defendant Brackett; and (c) requiring that the petitioner show cause as to why additional depositions are necessary.

**I. FACTS.**

1. This case is a petition for injunctive relief pursuant to RSA 91-A:7, filed by the petitioner, David K. Taylor, on or about August 4, 2011.
2. David Taylor complains against the defendants and seeks relief pursuant to RSA chapter 91-A.
3. The Court issued Orders of Notice requiring that the defendants answer the Petition on or before September 6, 2011, and scheduled a hearing for that date.

4. Prior to the scheduled hearing date, on August 22, 2011, counsel for the defendants produced defendant Brackett for a deposition. The petitioner questioned defendant Brackett for a full day, generating a transcript that is estimated to be in excess of 300 pages.

5. The parties appeared for the scheduled hearing on September 6, 2011, at which time, by agreement, the hearing was continued and the defendants were given an extension of one week to submit their answer. The defendants answered the Petition within the one week extension.

6. At the September 6, 2011 session, the parties advised the Court that they were guardedly optimistic that a settlement of the dispute could be reached. Settlement discussions have, however, not been fruitful.

7. The Hearing on the Merits is scheduled for October 20, 2011.

8. On September 28, 2011, the petitioner filed a Motion to Amend the Petition and a 26 page Proposed First Amended Petition. On the same date, the petitioner requested two additional depositions, from Board members Ann Wright and Megan Turnbull. The petitioner asked for dates as early as October 5, 2011 and expressed an intent to issue subpoenas for the depositions. Counsel has advised the petitioner that subpoenas will not be needed, and dated are being held by agreement pending the outcome of this motion.

## II. ARGUMENT.

9. Pursuant to Superior Court Rule 35(c) and (d), this Court has the authority to control the sequence, timing, and manner of discovery to prevent annoyance,

oppression, and undue burden. Accordingly, the defendants respectfully request, for the reasons outlined below, that this Court bar the petitioner from taking additional depositions while petitioner's Motion to Amend is pending, compel the petitioner to produce a copy of the transcript of the deposition of defendant Brackett, and require that the petitioner show cause as to why additional depositions are necessary.

A. **The petitioner should be barred from taking additional depositions until the Court has ruled on his motion to amend the Petition.**

10. The petitioner's submission of the proposed amendment, together with his contemporaneous request for additional depositions in this case, amounts to harassment. If the petitioner is permitted to take additional depositions while his Motion to Amend is pending, the defendants will be placed in a position of undue burden in terms of case preparation. The petitioner seeks to force the defendants to produce witnesses at a point in time when they will not know what claims will be before the Court at the time of the October 20, 2011 trial.

11. The defendants are entitled to a reasonable period of time to object to the Motion to Amend, and have a reasonable basis for doing so.

12. Generally, amendments to pleadings should be allowed to correct technical defects, but a court "need only allow substantive amendments when necessary to prevent injustice." Bennett v. ITT Hartford Group, Inc., 150 N.H. 753, 760 (2004); Keshishian v. CMC Radiologists, 142 N.H. 168, 175 (1997). The petitioner's proposed amendments are substantive, yet the petitioner has not identified why these amendments are necessary. Further, while the petitioner's Motion to Amend accurately cites RSA 514:9 with regard

to amendment of claims, any suggestion that the recrafting of the Petition in the manner sought is reasonable under the circumstances should be rejected by the Court.

Substantially amending a petition of the nature pending three weeks before trial is a substantive change in the case, and would require a significant amount of additional preparation by the defendants. It is in no way analogous to amending a writ or equity petition at an early stage of a proceeding that is not given the "fast track" priority of a claim under RSA chapter 91-A.

13. Given that the defendants intend to object to the petitioner's Motion to Amend, and that Superior Court Rules provide defendant ten days within which to file their objection, the Court cannot rule upon the petitioner's Motion to Amend until well after the dates on which the petitioner proposes to take depositions. Even if the amendment is allowed after the defendants are provided an opportunity to object, the defendants will then need time to answer the new petition.

**B. The petitioner must produce a copy of the transcript of the deposition of defendant Brackett to the defendants.**

14. Although over one month has passed since the petitioner deposed defendant Brackett, the petitioner still has not obtained and produced a transcript of the deposition. Taking such a lengthy deposition and then failing to take reasonable steps to have the transcript prepared and produced to the party from whom it was taken in a timely manner is unreasonable and inconsistent with New Hampshire practice. It is illustrative of the petitioner's way of handling this case. The petitioner should be ordered to have the

transcript prepared and produced to the defendants, and should not be permitted to take additional depositions until he has done so.

C. **Given the petitioner's conduct to date, the petitioner should be required to show cause as to why additional depositions are necessary.**

15. While the petitioner claims that he is owed additional documents, the defendants dispute that contention. The defendants have produced well over 1,000 pages of documents for the petitioner and have made every effort to comply with his original right to know request as well as supplemental requests made broadening the scope of documents sought.

16. The petitioner seeks to force the defendants to produce additional witnesses in a right to know petition despite the fact that producing any witnesses for depositions in a right to know matter is outside the norm.

17. The petitioner's course of conduct suggests not a desire to seek good faith relief under RSA chapter 91-A, but rather, a desire to engage in a pattern of harassment of the defendants. The combined effect of filing the Motion to Amend and contemporaneously requesting more depositions seeks unfair advantage. Not only should the petitioner be compelled to settle on a set of allegations before the Court even considers whether the defendants have any additional discovery obligations, but then the petitioner should be required to show cause as to why additional depositions are necessary, so as to protect the defendants from further harassment and undue burden. It is within the discretion of this Court to disallow the additional pretrial discovery sought by the petitioner. See Bennett v. ITT Hartford Group, Inc., 150 N.H. 753, 566 (2004).

### III. CONCLUSION.

18. Under the current circumstances of this case, the petitioner's insistence on taking additional depositions is clearly an effort to harass the defendants. Forcing the defendants to produce additional witnesses for deposition in the current procedural context of the case would be patently unfair and prejudicial.

19. This Court should exercise its authority to control the sequence, timing, and manner of discovery to prevent annoyance, oppression, and undue burden.

WHEREFORE, the defendants pray:

- A. That the Court bar the petitioner from taking additional depositions prior to any ruling on the pending motion to amend;
- B. That the Court hold a hearing on the petitioner's right to take any additional depositions and require that the petitioner show cause as to why additional depositions are needed;
- C. That the Court order the petitioner to produce a copy of the Brackett deposition immediately;
- D. For such other relief as the Court deems just and proper.

Respectfully submitted,

The Oyster River Cooperative School  
Board and Henry Brackett, Chairman  
By Their Attorneys,  
WIGGIN & NOURIE, P.A.

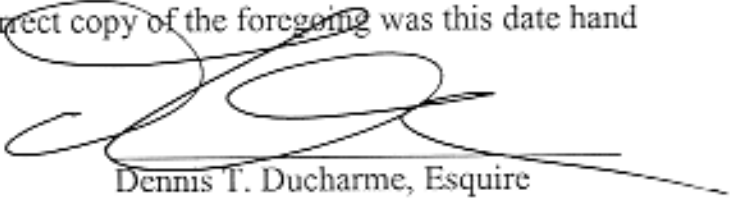
Dated: September 30, 2011

By: 

Dennis T. Ducharme, Esquire  
P.O. Box 808  
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Bar No. 683

Certification

I hereby certify that a true and correct copy of the foregoing was this date hand delivered to David K. Taylor.

  
Dennis T. Ducharme, Esquire

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