

VT SUPERIOR COURT  
WASHINGTON UNIT

STATE OF VERMONT

SUPERIOR COURT  
Washington Unit

DW  
2017 JAN 20 P 4:38 CIVIL DIVISION  
Docket No. 235-4-15 Wncv

JACQUELYN C. CARLOMAGNO  
Plaintiff

FILED

v.

STATE OF VERMONT  
Defendant

**ORDER**

**The State's Motion for Protective Order, filed December 14, 2016**

The State seeks a protective order pursuant to V.R.C.P. 26(c) to preclude an oral deposition, noticed by Ms. Carlomagno, of Vermont State Auditor Douglas Hoffer. The State argues that Mr. Hoffer is a high-ranking public official and should not be deposed pursuant to *Monti v. State*, 151 Vt. 609 (1989).

In *Monti*, the Vermont Supreme Court held counsels that one seeking to depose a high-ranking public official must “make a particularized showing of need for the deposition, i.e., that it is necessary to prevent prejudice or injustice to the party requesting it.” *Id.* at 613.

In applying this standard, trial courts should weigh the necessity to depose or examine an executive official against, among other factors, the substantiality of the case in which the deposition is requested; the degree to which the witness has first-hand knowledge or direct involvement; the probable length of the deposition and the effect on government business if the official must attend the deposition; and whether less onerous discovery procedures provide the information sought. These alternatives could include written interrogatories; deposition upon written questions; the designation of another representative to speak for the State on oral deposition; or seeking the information first from other sources.

*Id.* at 613–14 (citations omitted).

Ms. Carlomagno had personal conversations with Mr. Hoffer in relation to her whistleblowing allegations against the Agency of Education. In opposition to the State's motion, she cites to her deposition testimony about those contacts. However, neither her opposition memorandum nor that testimony includes any particularized showing of why she needs to depose him or what prejudice might result if she does not. It remains unclear what she hopes to achieve with the deposition. There is no question that she had telephone conversations with him. She, however, is fully capable of testifying about the conversations that took place. What she has not shown is any basis for needing other information from him.


She also had a meeting with him in the presence of two members of his staff. The State offered to have her depose these two employees of the auditor's office with whom she also had contact and who appear to have been involved in and knowledgeable of the office's contact with her and any actions taken by it in response to her allegations. She apparently declined.

*Monti* requires a showing of a particularized need to enable the court to meaningfully evaluate: whether there should be a deposition, whether the evidence sought should be sought elsewhere or through other discovery procedures, or whether it should not be permitted at all. Here, Ms. Carlomango asserts the generalization that Mr. Hoffer has "unique" knowledge and information about the facts of the case. However, she does not make a showing that is any more particularized than that. Since others, including herself, can testify about all of her contacts with him, and she has had the opportunity to obtain from others information about any consequences in the office from her conversations with him, she has simply not made a particularized showing to support a deposition or any substitute discovery.

Therefore, the State's Motion for Protective Order is *granted*.

The October 25, 2016 pretrial Order provides that discovery closed on January 16, 2017 and mediation was to be completed by that date. Given the fact that it is reasonable that the parties may have wanted this ruling before being in a position for meaningful mediation, the date for completing mediation is extended to February 15, 2017. No other changes to the pretrial order are authorized.

Dated at Montpelier, Vermont this 19<sup>th</sup> day of January 2017.

  
Mary Miles Teachout  
Superior Judge