

ESTATE OF JOSEPH PATERNO; :IN THE COURT OF COMMON PLEAS  
:OF CENTRE COUNTY, PENNSYLVANIA

WILLIAM KENNEY and JOSEPH V. :  
("JAY") PATERNO, former football :  
Coaches at Pennsylvania State University; :  
Plaintiffs :

:No. 2082 of 2013

VS. :

NATIONALCOLLEGIATE ATHLETIC :  
ASSOCIATION ("NCAA"), MARKE :  
EMMERT, individually and as President :  
Of the NCAA, and EDWARD RAY, :  
Individually and as former Chairman of the :  
Executive committee of the NCAA :  
Defendants :

DEBRA G. JIMEL  
PROthonotARY  
CENTRE COUNTY, PA

2017 APR 18 PM 1:18

FILED FOR RECORD

MEMORANDUM OPINION AND ORDER ON  
OUTSTANDING DISCOVERY MATTERS

Defendant, NCAA, has filed a motion for leave to depose one Timothy M. Curley, former Penn State Athletic Director and has requested that motion be filed under seal. Plaintiffs have responded and also asked that their response be filed under seal. Both requests to seal will be granted.

Of greater concern is the request to depose Mr. Curley. All parties have been aware of the Court ordered discovery cutoff date of April 29, 2016. Defendants claim that Mr. Curley's circumstances warrant an exception to the discovery deadline. The Court disagrees.

Before the deadline, the parties entered a stipulation on this discovery, after learning from Mr. Curley's counsel that he would invoke his 5<sup>th</sup> Amendment protection and not answer questions.

Defendants in fact did notice Mr. Curley for a deposition prior to the discovery deadline. Mr. Curley pled guilty to a misdemeanor charge of child endangerment on March 13, 2017. Defendants requested plaintiff to join in a Motion to reopen discovery after Curley's sentencing, which plaintiffs ultimately declined.

Defendants now wish to proceed with a deposition, reasoning that Mr. Curley no longer enjoys 5<sup>th</sup> Amendment protection in view of his plea to a criminal charge. This reasoning fails, however, as Mr. Curley has yet to be sentenced. Until sentencing, the final status of his plea remains in question.

Mr. Curley recently testified in the matter of Commonwealth v. Graham Spanier. In that trial according to news reports furnished by plaintiffs, Mr. Curley seemed to lack both recollection and details about conversations with Joe Paterno and others about Sandusky's sexual activities with minors on campus.

Thus, defendants are essentially speculating as to what Mr. Curley might say, and seem to hope his recollection will improve from the time of the Spanier trial. This Court has previously denied plaintiffs efforts for exceptions to the discovery cutoff and will do the same with defendant's current request. Under the circumstances presented, defendants have failed to show appropriate cause to reopen discovery relative to Mr. Curley. An appropriate Order follows:

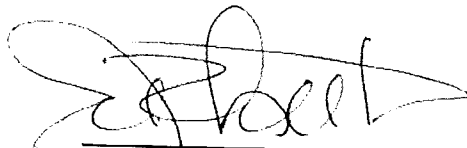
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ORDER

AND NOW, April 18, 2017, it is Ordered that defendant NCAA's request to seal its recent filing relative to deposing Timothy M. Curley is granted, together with plaintiffs request to seal its response.

Further, Defendant NCAA's motion for leave to depose Timothy M. Curley is denied.

BY THE COURT:

  
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 John B. Leete, Senior Judge