

# **EXHIBIT R**

**Medlock, Stephen M.**

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**From:** Katz, Jennifer [jkatz@oag.state.md.us]  
**Sent:** Tuesday, January 03, 2017 5:01 PM  
**To:** Medlock, Stephen M.; Kimberly, Michael B.; Hughes, Paul W.; Webb, Brantley  
**Cc:** Rice, Sarah  
**Subject:** RE: Benisek v. Lamone (D. Md.): Depositions [MB-AME.FID1259210]

Steve,

We do not agree to your modifications. If you reject the terms we have offered, we reiterate our demand that you do not engage in any ex parte contact with represented persons to conduct what you have termed “informal discovery” in this case, by which we understand you are not seeking to speak with State officials in order to redress your clients’ grievances. You may contact counsel to the General Assembly, AAGs Sandra Brantley and Kathryn Rowe, at (410) 946-5600, who will communicate your requests to speak with their clients. Assistant Attorney General Meghan Casey is representing former Governor O’Malley and his former staffers concerning this litigation. She can be reached at (410) 576-6324 or [mcasey@oag.state.md.us](mailto:mcasey@oag.state.md.us).

Best,  
Jennifer

Jennifer Katz  
Assistant Attorney General, Civil Division  
Office of the Attorney General  
200 Saint Paul Place, 20<sup>th</sup> Floor  
Baltimore, Maryland 21202  
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**From:** Medlock, Stephen M. [mailto:SMedlock@mayerbrown.com]  
**Sent:** Tuesday, January 03, 2017 10:43 AM  
**To:** Katz, Jennifer <jkatz@oag.state.md.us>; Kimberly, Michael B. <MKimberly@mayerbrown.com>; Hughes, Paul W. <PHughes@mayerbrown.com>; Webb, Brantley <BWebb@mayerbrown.com>  
**Cc:** Rice, Sarah <srice@oag.state.md.us>  
**Subject:** RE: Benisek v. Lamone (D. Md.): Depositions [MB-AME.FID1259210]

Jennifer:

Thanks for your reply. We are willing to agree to your conditions, but with the following modifications:

- 1) We don’t think it’s appropriate to place artificial limits on the number of interviews that can be conducted; if a legislator wants to speak with us, we should be allowed to speak with him or her.
- 2) We propose that we start by sending a list of 10 current and former legislators, legislative staff members, or staffers in the Governor’s office whom we would like to interview.
- 3) Counsel to the General Assembly will initiate contact with those legislators, explaining that plaintiffs’ counsel would like to interview them in connection with pending litigation concerning the 2011 congressional redistricting legislation.

- 4) If those individuals make themselves available for an interview, the parties will jointly interview them (each side having equal time to ask questions) in the presence of counsel to the General Assembly. While counsel for the General Assembly may advise individuals of their right to assert privilege in appropriate circumstances, counsel may not assert the privilege on anyone's behalf.
- 5) Plaintiffs may, at their own expense, arrange for the telephone interview to be transcribed by a court reporter.
- 6) And the parties will jointly collaborate on drafting an affidavit from the individual interviewed in the event the individual expresses a willingness to sign an affidavit.

If you agree to these terms, we propose that the parties submit a joint amended scheduling order to the Court that contains these parameters, so that the Court is apprised that these interviews will take place.

Regards,

Steve

**Stephen M. Medlock**

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**From:** Katz, Jennifer [<mailto:jkatz@oag.state.md.us>]

**Sent:** Friday, December 30, 2016 10:38 AM

**To:** Medlock, Stephen M.; Kimberly, Michael B.; Hughes, Paul W.; Webb, Brantley

**Cc:** Rice, Sarah

**Subject:** Re: Benisek v. Lamone (D. Md.): Depositions [MB-AME.FID1259210]

Steve,

Good morning. We have considered your proposal concerning informal discovery. As I initially stated, any interviews with current or former legislators regarding the subject matter of this lawsuit will need to be coordinated through counsel to the General Assembly, Assistant Attorneys General Sandra Brantley and Kathryn Rowe. Accordingly, we sent your proposal to Ms. Brantley and Ms. Rowe. Based on their concerns about adequately protecting their clients' privileges, we propose the following. (1) The plaintiffs send a list of 5 current or former legislators they would like to interview to counsel to the General Assembly; (2) counsel to the General Assembly will initiate contact with those legislators, explaining that plaintiffs' counsel would like to interview them in connection with pending litigation concerning the 2011 congressional redistricting legislation; (3) if those legislators make themselves available for an interview, the parties will jointly interview them (each side having equal time to ask questions) in the presence of counsel to the General Assembly; (4) counsel to the General Assembly may raise any objections necessary to protect the member's legislative privilege, if not waived, and to protect privileges of any other General Assembly member; and (4) the parties will jointly collaborate on drafting an affidavit from the current or former legislator in the event the legislator expresses a willingness to sign an affidavit.

Best,  
Jennifer

Jennifer Katz  
Assistant Attorney General

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**From:** Medlock, Stephen M. <[SMedlock@mayerbrown.com](mailto:SMedlock@mayerbrown.com)>  
**Sent:** Thursday, December 22, 2016 3:13 PM  
**To:** Katz, Jennifer  
**Cc:** Webb, Brantley; Kimberly, Michael B.; Darsie, Jeffrey; Hughes, Paul W.; Rice, Sarah  
**Subject:** RE: Benisek v. Lamone (D. Md.): Depositions [MB-AME.FID1259210]

Jennifer:

At this point, we anticipate that we would want to conduct approximately 10 such interviews.

Regards,

Steve

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**From:** Katz, Jennifer [<mailto:jkatz@oag.state.md.us>]  
**Sent:** Thursday, December 22, 2016 2:49 PM  
**To:** Medlock, Stephen M.  
**Cc:** Webb, Brantley; Kimberly, Michael B.; Darsie, Jeffrey; Hughes, Paul W.; Rice, Sarah  
**Subject:** RE: Benisek v. Lamone (D. Md.): Depositions [MB-AME.FID1259210]

Thank you, Steve. So that we can provide a response by December 27, will you provide us with an estimation of the number of current or former legislators with whom you would seek to hold informal, telephone interviews. We will also need to coordinate with the Assistant Attorneys General who represent General Assembly members.

Best,  
Jennifer

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**From:** Medlock, Stephen M. [<mailto:SMedlock@mayerbrown.com>]  
**Sent:** Thursday, December 22, 2016 11:13 AM  
**To:** Katz, Jennifer <[jkatz@oag.state.md.us](mailto:jkatz@oag.state.md.us)>  
**Cc:** Webb, Brantley <[BWebb@mayerbrown.com](mailto:BWebb@mayerbrown.com)>; Kimberly, Michael B. <[MKimberly@mayerbrown.com](mailto:MKimberly@mayerbrown.com)>; Darsie, Jeffrey <[jdarsie@oag.state.md.us](mailto:jdarsie@oag.state.md.us)>; Hughes, Paul W. <[PHughes@mayerbrown.com](mailto:PHughes@mayerbrown.com)>; Rice, Sarah <[srice@oag.state.md.us](mailto:srice@oag.state.md.us)>  
**Subject:** RE: Benisek v. Lamone (D. Md.): Depositions [MB-AME.FID1259210]

Jenifer and Sarah:

We have given some thought to your offer to engage in non-*ex parte*, informal discovery. To that end, here is our proposal: (1) the parties can jointly reach out to current or former legislators to hold informal, telephone interviews, (2) if those individuals make themselves available for an interview, the parties will jointly interview them (each side having equal time to ask questions), and (3) the parties will jointly collaborate on drafting an affidavit from the current or former legislator. Of course, Plaintiffs reserve their right to depose current and former legislators and other current and former state officials, but we believe that this may obviate the need for enlarging the number of depositions.

Please let us know if you agree with this proposal by December 27, so that we can jointly begin reaching out to current and former legislators that we would like to informally interview.

Regards,

Steve

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**From:** Katz, Jennifer [<mailto:jkatz@oag.state.md.us>]

**Sent:** Friday, December 16, 2016 4:17 PM

**To:** Medlock, Stephen M.

**Cc:** Webb, Brantley; Kimberly, Michael B.; Darsie, Jeffrey; Hughes, Paul W.; Rice, Sarah

**Subject:** RE: Benisek v. Lamone (D. Md.): Depositions [MB-AME.FID1259210]

Steve,

Thank you for your email. We continue to think it is premature to agree to 5 more depositions at this time, given the likelihood that a number of the individuals you seek to depose cannot be compelled to testify in this matter. We would move to quash subpoenas served on members of the GRAC, as well as current or former members of the Maryland General Assembly who seek to assert the testimonial privilege. Thus, we continue to believe that 10 depositions is sufficient. We are open to reexamining our position should the Court not grant those motions to quash, but would anticipate seeking to extend the discovery period to accommodate any increased discovery upon which we may agree.

I note that you say you originally thought you might be able to obtain through “informal discovery” information you now intend to seek through deposition. To the extent you use the term “informal discovery” in its standard use – i.e., the counsel-facilitated exchange of information without resort to formal discovery mechanisms – you have not proposed any such mechanism, nor have we rejected it. What we objected to – *ex parte* contact with represented parties – is not informal discovery. If you would like to discuss mechanisms other than depositions to obtain information that is properly subject to discovery, whether formal or informal, please let us know.

Best,  
Jennifer

Jennifer Katz

Assistant Attorney General, Civil Division

[jkatz@oag.state.md.us](mailto:jkatz@oag.state.md.us)

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**From:** Medlock, Stephen M. [<mailto:SMedlock@mayerbrown.com>]  
**Sent:** Friday, December 16, 2016 9:27 AM  
**To:** Katz, Jennifer <[jkatz@oag.state.md.us](mailto:jkatz@oag.state.md.us)>  
**Cc:** Webb, Brantley <[BWebb@mayerbrown.com](mailto:BWebb@mayerbrown.com)>; Kimberly, Michael B. <[MKimberly@mayerbrown.com](mailto:MKimberly@mayerbrown.com)>; Darsie, Jeffrey <[jdarsie@oag.state.md.us](mailto:jdarsie@oag.state.md.us)>; Hughes, Paul W. <[PHughes@mayerbrown.com](mailto:PHughes@mayerbrown.com)>; Rice, Sarah <[srice@oag.state.md.us](mailto:srice@oag.state.md.us)>  
**Subject:** RE: Benisek v. Lamone (D. Md.): Depositions [MB-AME.FID1259210]

Jennifer:

We do not believe that Plaintiffs have to disclose precisely who they plan to depose in order to agree on a relatively small extension in the number of deponents. Nevertheless, in order to reach an agreement on this matter, we will provide you with additional information regarding who Plaintiffs plan to depose. At this juncture, Plaintiffs plan to depose 5 GRAC members, the Defendants' 30(b)(6) representative, at least 5 current or former members of the Maryland General Assembly, and at least one member of the Department of Legislative Services. In addition, we may depose at least one official in the Maryland Democratic Party and one of Maryland's U.S. Congressional representatives. In many cases, we would have sought information from these individuals through informal discovery. However, given our recent exchange of correspondence, Plaintiffs are not now seeking this informal discovery.

As you noted, the discovery window in this matter is fairly tight. Please let us know by close of business today if you will agree to increase the number of fact witness depositions in this matter from 10 per side to 15 per side.

Regards,

Steve

**Stephen M. Medlock**

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**From:** Katz, Jennifer [<mailto:jkatz@oag.state.md.us>]  
**Sent:** Wednesday, December 14, 2016 3:57 PM  
**To:** Medlock, Stephen M.  
**Cc:** Webb, Brantley; Kimberly, Michael B.; Darsie, Jeffrey; Hughes, Paul W.; Rice, Sarah  
**Subject:** Re: Benisek v. Lamone (D. Md.): Depositions [MB-AME.FID1259210]

Steve, please see the forwarded email. I am working from home today and somehow managed to send this to everyone but you.

Best,  
Jennifer

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**From:** Katz, Jennifer  
**Sent:** Wednesday, December 14, 2016 3:52:20 PM  
**To:** Katz; Jennifer  
**Cc:** Webb; Brantley; Kimberly; Michael B.; Darsie; Jeffrey; Hughes; Paul W.; Rice; Sarah  
**Subject:** Re: Benisek v. Lamone (D. Md.): Depositions [MB-AME.FID1259210]

Steve,

We think that the 10 depositions you originally proposed, and to which we agreed, is more than enough given the subject matter of the litigation and, given the very tight discovery schedule, we are not inclined to agree to more at this time. You have not identified a list of who you intend to depose, but we assume that you may seek to depose members of the GRAC and others who are protected by legislative privilege and cannot be compelled to testify in this matter. Thus, we continue to believe that 10 depositions is more than adequate. Further, when we agreed to the 10 depositions per side, we did not understand that agreement to be conditioned on your ability to seek pre-discovery from current and former state officials represented by the Attorney General's Office. If you want to provide us with a list of who you seek to depose, we can further discuss your request, and try to reach an agreement.

Best,  
Jennifer

On Dec 13, 2016 1:41 PM, "Medlock, Stephen M." <[SMedlock@mayerbrown.com](mailto:SMedlock@mayerbrown.com)> wrote:  
Jennifer:

When we initially agreed to 10 depositions per side in the joint discovery plan, we believed that we would be able to conduct informal discovery with current and former delegates and senators who were not represented in this matter. Following on our recent exchange of letters, however, we must now resort to command discovery. Accordingly, we propose raising the number of depositions per side from 10 to 15. By Friday, can you please let us know whether you will consent to this mutual increase in the number of depositions?

Regards,

Steve

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Associate

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