

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION**

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SUZANNE RUDELLE, )  
 )  
 PLAINTIFF, )  
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 V. )  
 )  
 WEAKLEY COUNTY )  
 SHERIFF'S DEPARTMENT )  
 )  
 DEFENDANT. )

NO: 1:07-cv-01159-JDB-egb

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**ORDER DENYING PLAINTIFF’S MOTION FOR DISCOVERY SANCTIONS**

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Plaintiff has filed a Motion for Discovery Sanctions (Doc. 15) pursuant to Rule 26(a)(1)(A)(II) and 37(C)(1) of the Federal Rules of Civil Procedure. The basis of Plaintiff’s Motion is that Defendant possesses nineteen tape-recorded conversations relevant to the issues in this case, which were not disclosed in Defendant’s Rule 26 initial disclosures. Defendant has responded, arguing that it has no duty to disclose the tapes because it will use them for impeachment purposes only, not to support its claims or defenses.

Rule 26(a)(1)(A)(ii) of the Federal Rules of Civil Procedure commands that a party must disclose in its initial disclosures:

a copy--or a description by category and location--of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment . . . .

The plain language of the Rule makes clear that the disclosing party must only disclose materials if that party intends to use the materials to support its claims or defenses. This Court has previously discussed the disclosure requirements of Rule 26(a)(1) in the context of witness disclosure and noted that where the disclosing party seeks to use the information solely for impeachment purposes the party need not disclose the information in its initial disclosures. *See Long v. P&G Mfg. Co.*, 2005 U.S. Dist. LEXIS 43189 (W.D. Tenn., May 16, 2005) *adopted by Long v. P&G Mfg. Co.*, 2005 U.S. Dist. LEXIS 43205 (W.D. Tenn., June 9, 2005). In *Cummings v. General Motors Corp.*, the Tenth Circuit explained parties' disclosure obligations under the current Rule:

Under the 2000 amendments, a party's "initial disclosure obligation . . . has been narrowed." Fed. R. Civ. P. 26 advisory committee's note, 2000 amends . . . Under this rule, a party is not obligated "to disclose witnesses or documents, whether favorable or unfavorable, that it does not intend to use." Fed. R. Civ. P. 26 advisory committee's note, 2000 amends.; *see Gluck v. Ansett Austl. Ltd.*, 204 F.R.D. 217, 221-22 (D.D.C. 2001) (holding under the new version of Rule 26 that the opposing party was not required to produce information with regard to potential witnesses because "the essential inquiry is whether the disclosing party intends to use the witness.").

*Cummings v. General Motors Corp.*, 365 F.3d 944, 953-54 (10th Cir. 2004) (emphasis added).

Here, Defendant has stated it will only use the recordings for impeachment purposes. Accordingly, it was under no obligation to disclose the information in its Rule 26 initial disclosures. Plaintiff's argument that the recordings have a dual purpose because they are both substantive evidence and can be used for impeachment misses the point, as it fails to recognize that the Rule 26 disclosures hinge on the disclosing party's intended use of the evidence. Plaintiff's remedy for acquiring these tapes was through a discovery request seeking such

evidence, which Plaintiff admits she did not serve. Accordingly, Plaintiff's Motion for Sanctions is DENIED.

It is further ORDERED that Defendant is prohibited from using these recordings to support its claims and defenses, and may use the recordings solely for impeachment purposes.

IT IS SO ORDERED.

**s/ Edward G. Bryant**  
EDWARD G. BRYANT  
United States Magistrate Judge

**May 22, 2009**  
Date