

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

July 30, 2019

DAVE O'BRIAN TINGLING,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 19B00009
)	
CITY OF RICHMOND, VA,)	
Respondent.)	
_____)	

ORDER DENYING MOTION FOR PROTECTIVE ORDER AND EXTENDING DEADLINES

This matter is before the Court on Respondent’s Motion for Protective Order and Complainant’s Motion to Expand Time for Discovery Completion.¹

I. BACKGROUND

On January 15, 2019, Complainant filed a complaint against Respondent alleging citizenship status discrimination and retaliation in violation of § 1324b. Respondent filed an answer on March 12, 2019. On April 9, 2019, the Court held a prehearing conference and set the deadlines as follows: discovery closed on July 9, 2019, dispositive motions are due on August 22, 2019, and responses are due on September 16, 2019.

On June 29, 2019, Complainant served Respondent with his discovery requests. On July 10, 2019, Respondent filed a Motion for Protective Order. On July 11, 2019, Complainant filed a Motion to Allow Additional Time for Discovery. Complainant filed a response to the Motion for Protective Order on July 18, 2019.

Respondent asks the Court to issue a protective order as to all of Complainant’s discovery requests, including interrogatories, request for admissions, request for production of documents, and depositions. Respondent contends that Complainant did not timely serve his discovery requests or schedule depositions in accordance with the discovery closure deadline.

¹ Complainant filed a Motion to Compel on July 30, 2019. The Court will rule on that motion after Respondent has an opportunity to respond.

Complainant seeks additional time for discovery and contends that he timely served his discovery requests because he served them prior to the close of discovery.

II. DISCUSSION

Under the OCAHO rules, upon a party's request and if the party has shown good cause, the Administrative Law Judge (ALJ) may enter a protective order to protect a party from "annoyance, harassment, embarrassment, oppression, or undue burden or expense[.]" 8 U.S.C. § 68.18(c). "The party seeking the protective order has the burden of showing that good cause actually exists." *U.S. v. Employer Staffing Group II, LLC*, 11 OCAHO no. 1234, 4 (2014). To show good cause, the moving party must present particular and specific facts as to why it needs a protective order, and "[b]road allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not support a good cause showing." *Webb v. Green Tree Servicing, LLC*, 283 F.R.D. 276, 278 (D. Md. 2012). "[T]he standard for issuance of a protective order is high." *Minter v. Wells Fargo Bank, N.A.*, 258 F.R.D. 118, 125 (D. Md. 2009).

Respondent contends that Complainant sent interrogatories, requests for admissions, and requests for production of documents by email on June 29, 2019. Discovery closed on July 9, 2019. Respondent argues it was not required to respond because Complainant sent the requests "at the last minute" and its responses would be due twenty days after the discovery closure date set by the Court. Therefore, Respondent asserts that Complainant's discovery requests are untimely, so it should not be required to respond.

Respondent has not shown any harm it may suffer or otherwise shown good cause for a protective order regarding Complainant's interrogatories, request for production of documents, and request for admissions. Respondent essentially asks the Court to prohibit Complainant from seeking *any* discovery because Complainant served the discovery requests in the latter days of the discovery period. Respondent did not make specific objections to the discovery requests and courts have found that "a general request for a protective order is not sufficient." *Flood v. Margis*, 64 F.R.D. 59, 61 (E.D. Wis. 1974); *Ayers v. Continental Cas. Co.*, 240 F.R.D. 216, 222 (N.D. W.Va. 2007). Respondent has not provided any examples or articulated any reasoning for barring Complainant from seeking discovery. As such, Respondent has not shown good cause for entering a protective order regarding Complainant's interrogatories, request for production, and request for admissions.

Additionally, on June 29, 2019, Complainant sent a document titled "Complainant's First Request for Deposition" with a list of individuals he intended to depose and a proposed schedule, but the document did not contain specific dates, times, or locations for the depositions. Respondent contends that on July 9, 2019, a court reporter contacted Respondent about depositions scheduled for that afternoon, but Respondent advised the court reporter the

depositions could not take place.² Respondent asserts that even if the “First Request for Deposition” is construed as a Notice of Depositions, Complainant did not timely notify Respondent of the depositions to ensure compliance with the discovery closure date. “It is very unusual for a court to prohibit the taking of a deposition altogether and absent extraordinary circumstances, such an order would likely be in error.” *Medlin v. Andrew*, 113 F.R.D. 650, 652–53 (M.D. N.C. 1987) (quoting *Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th Cir. 1979)). Respondent has not alleged any harm it might suffer if the Court does not grant the protective order and Respondent has not shown good cause for granting the protective order as it relates to the depositions. The Court finds that Complainant’s failure to inform Respondent of the time and date of the planned depositions prior to the close of discovery is not good cause for prohibiting Complainant from taking any depositions.

III. CONCLUSION

Respondent’s Motion for Protective Order is DENIED. Complainant’s Motion to Allow Additional Time for Discovery is GRANTED.

The deadlines in this case are reset to the following: Discovery closes on September 6, 2019, dispositive motions are due on October 7, 2019, responses to dispositive motions are due on November 7, 2019, and the hearing is reset for January 2020 in Richmond, Virginia.

SO ORDERED.

Dated and entered on July 30, 2019.

Jean C. King
Chief Administrative Law Judge

² Respondent alleges it told the court reporter that no depositions were scheduled. Complainant contends that Respondent told the court reporter that since the City Attorney was not present, the depositions could not take place and Respondent did not permit Complainant to communicate with the court reporter.