

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

ROBERT HEATH, Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding OCAHO Case No. 2020B00072
)	
ASTA CRS, INC., Respondent.)	
)	

ORDER DENYING MOTION FOR PROTECTIVE ORDER

On June 10, 2021, Respondent ASTA CRS Inc. filed with the Court a courtesy copy of a notice of deposition for Complainant Robert Heath. The Notice called for Complainant to be deposed on June 22, 2021 at 10:00 am. The Notice asserted that the deposition will continue “from day to day until it is completed.”

On June 11, 2021, Complainant filed with the Court a Motion in Opposition to the Deposition.¹ Complainant noted that in the most recent scheduling order of May 5, 2021 the Court directed that the close of discovery shall be June 28, 2021, however “all discovery requests must be served at least 30 days before the close of discovery.” The Court further clarified that “that date is now May 28, 2021.” May 5, 2021 Order Granting Second Ext. Discovery 2. Complainant argues that he should not be required to attend the deposition as the notice occurred after the deadline. Complainant further argues that the notice’s directive that the deposition will continue from “day to day” is inspecific and violative of his rights.

Respondent opposes the motion, filing its opposition with the Court on June 15, 2021. Respondent asserts that the parties had discussed scheduling a date for Complainant’s deposition as early as June 4, 2021, and that during those discussions Complainant assented to June 22, 2021 as a viable date for the deposition. Respondent further argues that the May 28, 2021 deadline applies to written discovery, for which the Court’s order (and the federal rules) require a response within 30 days of issuance. By contrast, oral discovery, such as a deposition notice, may occur at a reasonable time within the parameters for discovery. Concerning the objection regarding the deposition occurring from “day to day until it is complete,” Respondent asserts that this is a boilerplate phrase for a deposition notice and that it reflects the possibility that an

¹ Complainant styles his submission to the Court as a Motion in Opposition to the Deposition, however the more commonly used title for such a motion is a motion for a protective order regarding the deposition. *See* Fed. R. Civ. P. 26(c)(1) (“A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending – or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken.”) This is purely a matter of semantics — the Court properly understands Complainant as seeking to prevent his deposition from occurring, regardless of its title.

unforeseen delay in the deposition may cause a proceedings begun on the first day to conclude on another.

Respondent's objections are well taken. As counsel notes, the 30 day deadline for filing discovery applies to written discovery, in concert with the Court's order as discussed during the prehearing conference. By contrast, the notice of a deposition must be submitted at a reasonable time within the period designated for discovery. Per 28 C.F.R. § 68.22, 10 days is presumptively sufficient notice for witnesses deposed in the continental United States. *See also* Fed. R. Civ. P. 30(b)(1) "A party who wants to depose a person by oral questions must give *reasonable written notice* to every other party." (emphasis supplied). Further, Respondent asserts that the June 22, 2021 date was a mutually agreed upon date between the parties — to the extent Complainant might have been prejudiced in theory by a deposition notice close to the end of discovery, this concern is alleviated by the parties' collaborative efforts to coordinate their schedules, resulting in the parties settling upon a mutually convenient date.

Addressing Complainant's objections concerning the length of the deposition, Rule 30(d)(1) provides that "unless otherwise stipulated or ordered by the court, a deposition is limited to one day of 7 hours." The rule further provides that the Court shall extend the time period for discovery as necessary per Rule 26(b)(1) and (2) to fairly examine the witness. Fed. R. Civ. P. 30(d)(1). Further, Rule 30(a)(2)(A)(ii) directs that the parties shall seek leave of the court in advance of deposing a witness more than once. Fed. R. Civ. P. 26(b)(1).

Accordingly, Complainant's concerns about the deposition notice allowing for an unfettered deposition of endless duration are not well founded. The previously mentioned constraints on any deposition still exist, as well as those identified in (for instance) the protective order provisions of 28 C.F.R. § 68.22(c), § 68.42, Rule 30(d)(3), and Rule 26(c). To the extent that either party believes the deposition is in violation of the rules, or is otherwise oppressive or unduly burdensome, they may as always avail themselves of the Court after attempting in good faith to resolve the dispute without the Court's intervention.

Complainant's motion for a protective order is DENIED. The deposition will occur as scheduled.

IT IS SO ORDERED.

Dated and entered on June 17, 2021.

Honorable John A. Henderson
Administrative Law Judge