

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

November 21, 1996

|                           |                              |
|---------------------------|------------------------------|
| UNITED STATES OF AMERICA, | )                            |
| Complainant,              | )                            |
|                           | )                            |
|                           | ) 8 U.S.C. §1324c Proceeding |
| v.                        | ) OCAHO Case No. 96C00031    |
|                           | )                            |
| ROBERTO C. DAVILA,        | )                            |
| Respondent.               | )                            |
| _____                     | )                            |

**ORDER GRANTING COMPLAINANT'S MOTION FOR A  
PROTECTIVE ORDER**

Complainant served a motion for protective order on September 19, 1996, concerning Respondent's notice of deposition of INS Special Agent James Pokorney. Complainant was concerned that Respondent intended to inquire into irrelevant and personal matters that had nothing to do with this case. On September 27, 1996, I conducted a telephonic prehearing conference (PHC) regarding Complainant's motion for protective order. During the conference Complainant's counsel, Paul B. Hunker, III, explained that he was seeking to postpone the deposition of James Pokorney, Special Agent of the Immigration and Naturalization Service, which was previously scheduled for September 27, 1996. In addition, Complainant sought protection from providing the documents requested in paragraphs 1, 2, and 25-31 of the September 13, 1996, notice of deposition,<sup>1</sup> asserting that said documents are irrelevant to this proceed-

<sup>1</sup> The documents sought included copies of: Special Agent Pokorney's driver's license and social security card; titles to all vehicles owned by the agent; the title to his 1995 utility trailer; documents authorizing the agent to use any vehicle that belongs to the United States Government at any time since January 1, 1995; his personal income tax returns, including all attachments, for 1994 and 1995; all credit cards in his possession since January 1, 1995, that belong to the United States Government; all receipts for any gasoline purchased by him since January 1, 1995; and any vouchers or other documents prepared by the agent for the purpose of obtaining from the United States Government any part of the cost of any gasoline purchased since January 1, 1995.

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ing and are designed to annoy, harass and unduly burden the Immigration and Naturalization Service.

Complainant argued that the documents requested in the notice of deposition show a “high degree of likelihood that the deposition of Agent Pokorney will focus on irrelevant, annoying and useless questioning in a further attempt to burden and harass the Service.” Motion for Protective Order at 2. Complainant’s counsel asserted that the requests were merely a “fishing expedition” and that such evidence would be extrinsic and inadmissible at trial. Respondent’s counsel stated that the documents in question are relevant to determining Agent Pokorney’s credibility

I granted Complainant’s motion for a protective order to the extent it sought a postponement of the deposition, and I ordered the parties to consult with each other as to a mutually convenient time and place for the deposition of Special Agent Pokorney. See September 30, 1996, Order Regarding Complainant’s Motion for Protective Order. As to the subject matter of the deposition, I ruled that it was premature to determine whether the deposition questions will focus on “irrelevant, annoying or useless questioning,” as Complainant contends in the Motion for Protective Order at page 2. In addition, Mr. Hunker did not provide a proposed protective order, and therefore it was not clear specifically what protection he is seeking. Therefore, I ordered that if there continued to be a dispute as to the subject matter of the deposition, then Complainant should file a proposed protective order, specifying the protection it was seeking. In the event that Complainant filed such a proposed protective order, Respondent would have ten days to respond to it. Complainant then filed a proposed protective order and a brief in support of its motion for protective order.<sup>2</sup> However, Respondent has not filed any opposition to the brief or the proposed order.

As provided by the OCAHO Rules of Practice, a protective order may be issued to prevent annoyance, harassment, embarrassment, oppression or undue burden in the course of discovery. 28 C.F.R. §18 (c). This rule is similar to Rule 26(c) of the Federal Rules of Civil Procedure.. See *Elvis Presley Enterprises, Inc. v. Elvisly Yours, Inc.*, 936 F.2d 889, 892–93 (6th Cir. 1991) (finding that certain deposition questions asked of a cor-

<sup>2</sup>The proposed order requests that the subject matter of *Complainant’s* deposition of Mr. Pokorney should be limited. However, I believe that it is the Respondent who is taking the deposition.

porate director were irrelevant and immaterial, thus a protective order as to those questions was warranted); *Computer Network Corp. v. Spohler*, 95 F.R.D. 500, 503 (D.D.C. 1982) (holding that a protective order regarding certain deposition questions was warranted where the deposing party offered only “conjecture and speculation” as to the questions’ possible relevance). See also *Grinnell Corporation v. Hackett*, 70 F.R.D. 326, 333–34 (D. R. I. 1976) (articulating test for protective order to be where likelihood of harassment is “more probable than not” and information sought is “fully irrelevant and could have no possible bearing on the issues”) (internal citations omitted).

Essentially, Complainant is seeking to prevent Respondent from asking questions which are irrelevant and intrude into purely personal matters. I still believe that the motion is somewhat premature because the deposition has not taken place, and it is not clear that Respondent will inquire into such areas. However, given the personal nature of the documents that were requested in the notice of deposition, Complainant rightly is apprehensive that the deposition may be used to harass the witness. Further, I note that Respondent has failed to respond to the motion and hence it is unopposed.

The subject matter of Mr. Pokorney’s deposition shall be limited to the issues raised by the complaint and answer to the complaint. Respondent will be permitted to question Mr. Pokorney as to arrests, convictions, disciplinary actions and other acts which might indicate lack of honesty or lack of truthfulness. However, unless prior permission is granted by the Court for good cause shown, the deposition shall not inquire into Mr. Pokorney’s personal life, such as his tax returns, ownership of his house or motor vehicles, or his credit card receipts.

Since it is difficult to delineate in advance a bright line standard as to what constitutes personal questions which are irrelevant and prohibited by this Order, Complainant is given leave to object and to instruct the witness not to answer questions which Complainant believes in good faith violate this protective order. If Respondent disagrees with the objection, he may certify the deposition questions which the witness has refused to answer and may file a motion to compel with the Court.

ROBERT L. BARTON, JR.  
Administrative Law Judge