

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

June 14, 1995

UNITED STATES OF AMERICA, )  
Complainant, )  
)  
v. ) 8 U.S.C. 1324a Proceeding  
) OCAHO Case No. 94A00167  
WILLIAM D. CLARK, )  
D/B/A TIDWELL MEDICAL )  
CENTER, )  
Respondent. )  
\_\_\_\_\_ )

ORDER GRANTING COMPLAINANT'S MOTION FOR  
PROTECTIVE ORDER

On May 26, 1995, complainant filed an unopposed pleading captioned Motion for Protective Order, in which it requested the undersigned "to enter an order protecting the release of the videotaped depositions of Special Agents Michael Murphy, David Case and Luis Martinez to any outside sources."

On January 5, 1995, counsel for the parties entered into an agreement in which complainant agreed to allow respondent to videotape those three (3) agents' depositions in exchange for respondent's promise not to release the videotapes to any outside sources nor to utilize them in any manner beyond this proceeding. Complainant stressed the importance of not releasing the videotapes because it would jeopardize the personal safety of those three (3) agents and would also diminish their effectiveness in participating in undercover operations should their identities become known.

On January 27, 1995, respondent's counsel of record, Adan Vega, Esquire, informed Maelissa Brauer, Esquire, complainant's counsel of record, that Mexican officials were interested in obtaining the videotapes. Ms. Brauer reminded Mr. Vega of his January 5, 1995

promise not to release the videotapes, whereupon he advised her that he was no longer bound by that earlier promise because complainant had filed a Motion to Compel in the interim.

The parties continued their settlement discussions and on May 26, 1995, fearing that respondent's counsel might release the videotapes, complainant filed the pending request for a protective order.

The pertinent procedural regulation governing the issuance of protective orders in unlawful employment cases provides that:

(c) Upon motion by a party or the person from whom discovery is sought, and for good cause shown, the Administrative Law Judge may make any order which justice requires to protect a party or person from annoyance, harassment, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (1) The discovery not be had;
- (2) The discovery may be had only on specified terms and conditions, including a designation of the time, amount, duration, or place;
- (3) The discovery may be had only by a method of discovery other than that selected by the party seeking discovery; or
- (4) Certain matters not relevant may not be inquired into, or that the scope of discovery be limited to certain matters.

28 C.F.R. § 68.18(c).

This rule is similar to and based upon Rule 26(c) of the Federal Rules of Civil Procedure, which provides for the issuance of protective orders in federal court cases. For this reason, administrative law judges assigned to this Office have found federal case law interpreting Rule 26(c) to be instructive in determining whether to issue protective orders pursuant to 28 C.F.R. § 68.18(c). United States v. Power Operating Co., 3 OCAHO 561, at 3 (1993); Kamal-Griffen v. Cahill, Gorden & Reindel, 3 OCAHO 487, at 5 (1993).

It is routine to request a protective order for the purpose of prohibiting the disclosure of discoverable items to outside parties. See Wije v. Barton Springs/Edwards Aquifer C.D., 4 OCAHO 635, at 4-5 (1994); United States v. Guardsmark, 4 OCAHO 614, at 5 (1994)(citations omitted); see also In re Penn Cent. Sec. Litig., 347 F. Supp. 1347, 1348 (E.D. Pa. 1972)(the court, in its discretion, may issue orders for the protection of parties in the taking of depositions).

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It is also common practice to request a protective order to confine the use of discoverable items to the litigation in which the motion for a protective order was filed. See Wije, 4 OCAHO 635, at 4-5; Guardsmark, 4 OCAHO 614, at 7(citations omitted).

Complainant has clearly demonstrated the need to protect the videotaped depositions from being disclosed to outside sources. Since releasing those videotaped depositions of the special agents would compromise the personal safety of those agents and would hinder their ability to effectively perform their duties, since INS special agents routinely work under the cover of anonymity.

Further, respondent's counsel had promised not to release the videotaped depositions to outside sources, and had also promised not to use the videotapes for any matter beyond the purposes of this proceeding. Had these promises not been made, complainant's counsel quite obviously would not have allowed respondent to videotape the depositions of those three (3) special agents.

For these reasons, complainant's May 26, 1995 Motion for Protective Order is hereby granted.

Accordingly, respondent is hereby ordered to use the videotaped depositions of INS Special Agents Michael Murphy, David Case and Luis Martinez only in connection with this litigation and for no other purpose. Respondent is further ordered not to release the agents' videotaped depositions to any outside sources, in accordance with its counsel of record's promise made to complainant's counsel of record.

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JOSEPH E. MCGUIRE  
Administrative Law Judge