

ELECTRONIC ENDORSEMENT IN MILO V. GALANTE, 09 CV 1389 (JBA) ON DEFENDANT'S MOTION FOR PROTECTIVE ORDER, FILED 6/30/11 (Dkt. #78)

8/3/11 – Under the Scheduling Order issued by U.S. District Judge Janet Bond Arterton on 1/7/11 (Dkt. #72), all discovery is to be completed by 8/13/11, and after a pre-filing conference, all dispositive motions are to be filed by 9/30/11.

In his Motion for Protective Order, filed 6/30/11 (Dkt. #78), defendant objects to videotaping his deposition at FCI Allenwood Low, which will show defendant in "prison garb," and in a "custodial setting," which will be prejudicial to him at trial, particularly since "he intends, to the extent permitted by both the Bureau of Prisons and the United States Marshal's Service, to appear at the trial in person, both to assist counsel and to testify." (Dkt. #78, at 1, n.1, 2-3 & Exh. A).

In her brief in opposition, plaintiff asserts that her "sole purpose" in videotaping defendant's deposition is "for presenting his testimony to the jury should [defendant] not be present at trial[,] and "[t]o that end, [plaintiff] would agree to place the videotape of the deposition under a protective order specifying that the tape could only be used at trial and for no other purpose." (Dkt. #79, at 1, 5-7). As plaintiff further points out, the Bureau of Prisons lists defendant's release date as January 2015, substantially later than the trial here, defendant is located beyond the subpoena power of this court, there is no guarantee that defendant will be present at trial, and defendant is "an essential witness in this case." (Id. at 3-5).

Accordingly, defendant's Motion for Protective Order (Dkt. #78) is granted in limited part so that the videotape may be used only at trial and for no other purpose, without prejudice to Judge Arterton reaching any other conclusion prior to or during trial with respect to its admissibility, and is denied in all other respects.

If any counsel believes that a continued settlement conference before this Magistrate Judge would be productive (see Dkts. ##47, 63, 69), he or she should contact this Magistrate Judge's Chambers accordingly.