

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Steinbuch	:	1:05-CV-970 (PLF) (JMF)
	:	Judge Paul L. Friedman
	:	
Plaintiff,	:	
	:	
-v-	:	
	:	
	:	
Cutler	:	
	:	
Defendant.	:	

PLAINTIFF’S MOTION FOR PROTECTIVE ORDER

In Judge Friedman’s reference of discovery matters to Magistrate-Judge Fagiola, [Doc. #26], the Court stated that Magistrate-Judge Fagiola should decide the “manner of recording depositions, i.e., videotape vs. transcription” should the parties not agree. The parties have failed to come to an agreement on this issue, with counsel for defendant insisting on videotaping plaintiff’s deposition. Pursuant to local rule 7(m), the parties have conferred during their May 23, 2007 court-ordered discovery teleconference and defendant opposes. Thus, pursuant to Judge Friedman’s Order, plaintiff moves this Court.

Whether to enter a protective order addresses the sound discretion of the court. *Thomas v. IBM*, 48 F.3d 478, 482 (10th Cir. 1995). Fed. R. Civ. P. 26(c) provides that the court, upon a showing of good cause, "may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." The notes of the advisory committee recognize that circumstances may warrant objections to the nonstenographic recording of a deposition. Fed. R. Civ. P. 30(b). *See Westmoreland v. CBS, Inc.*, 584 F. Supp. 1206, 1212-1213 (D.D.C. 1984), *modified on other grounds*, 770 F.2d 1168 (D.C. Cir. 1985) (videotaping of deposition of

former CIA director precluded); *Paisley Park Enters. v. Uptown Prods.*, 54 F. Supp. 2d 347, 349 (S.D.N.Y. 1999) (videotaping of deposition of celebrity permitted, but protective order issued forbidding use of tape for any purpose unrelated to lawsuit).

Counsel for defendant have repeatedly acted to embarrass and harass plaintiff through inappropriate public disclosures of discovery material. First, counsel for defendant placed on the public ECF system plaintiff's private financial information, in violation of this Court's rules governing the ECF system. [Doc. #60-4.] Second, defendant's counsel placed on the public record information from discovery to support defendant's counsels' personal beliefs about admittedly unrelated discovery; as a consequence this material was disseminated on the internet. This Court ruled that this action was deserving of admonishment. [Doc. #65.] Third, in its January 8, 2007 Order [Doc. # 73], this Court reiterated "that [a party would] violate[] the orders of this Court by placing on the public record direct quotes of plaintiff's discovery requests with summations of defendants' responses." (Emphasis added.) And, on January 10, 2007, Defendant filed a document that violated this Court's discovery Orders, by citing to and summarizing discovery requests and responses in detail. [Doc. # 77.] Indeed, Defendant's reference to Plaintiff's responses were far more detailed than what the Court had referenced as prohibited behavior in its January 8, 2007 Order.

Given this history, plaintiff needs protection from Defendant's repeated actions so as to prevent the "accidental" release of plaintiff's video deposition on, inter alia, the internet. As a consequence, this Court should order that plaintiff's deposition should be recorded via transcription.

Dated: May 27, 2007

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