

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JOHN D. BROWN,)
)
Plaintiff,)
)
v.)
)
SHAWN D. RITCHEY and HENRY P.)
TEVERBAUGH,)
)
Defendants.)

Case No. 3:14-cv-1122-NJR-DGW

ORDER

WILKERSON, Magistrate Judge:

Now pending before the Court are the Motion for Extension of Time filed by Defendants on February 18, 2016 (Doc. 33), the Motion to Compel filed by Defendants on March 1, 2016 (Doc. 34), and the Motion Opposing Defendants’ Motion to Compel filed by Plaintiff on March 14, 2016 (Doc. 35).

On April 22, 2015, this Court entered a Scheduling Order setting forth a February 19, 2016 discovery deadline and a March 25, 2016 dispositive motion filing deadline (Doc. 26). At the time, Defendants were represented by attorney Brent J. Colbert who sought, and was granted, two extensions of time to file an Answer. On September 14, 2015, attorney Christopher L. Higgerson entered an appearance on behalf of Defendants. Then, on February 2, 2016, attorney Jeremy C. Tyrrell entered an appearance on behalf of Defendants. A day before the discovery cutoff, Defendants seek a 30 day extension to conduct Plaintiff’s deposition because of “counsel’s recent assignment to this case and workload.” Prior to receiving the Court’s permission to conduct discovery beyond the deadline, Defendants issued a notice of deposition to Plaintiff, indicating their intent to depose him in Springfield, Illinois. Plaintiff currently resides in Chicago, Illinois.

Plaintiff objected to the location; Defendants now seeks an Order compelling Plaintiff to sit for a deposition in Springfield, Illinois, pursuant to Federal Rule of Civil Procedure 37(d), because they “should not be required to incur the expense of having to depose Plaintiff in Chicago, or otherwise arrange his travel.” Plaintiff himself indicates that he has no money with which to travel to Springfield, Illinois to sit for a deposition. Plaintiff does not otherwise object to an extension of time to complete the deposition.

Defendants have made no showing of why they waited until after the discovery deadline to attempt to depose Plaintiff. Defendants have been represented by counsel since the filing of the Answer, did not object to the Scheduling Order, and have not sought any extension of the discovery deadline up until this point. Current counsel’s excuses, that his workload and recent assignment prevented discovery, does not explain why Defendants (then represented by previous counsel) waited almost ten months to conduct Plaintiff’s deposition. While the revolving door at the Attorney General’s Office and the lack of a state budget are beyond the control of Defendants’ current counsel, such concerns should not function as *carte blanche* to conduct discovery beyond a Court imposed deadline. The Court will not enforce the untimely notice of deposition and direct where Plaintiff should sit for a deposition.

However, because Plaintiff has not objected to a short extension of time, the discovery deadline in this matter is extended to **April 15, 2016** for the sole purpose of taking Plaintiff’s deposition. The Court suggests that the parties work promptly to resolve the issue of where the deposition will take place. Both parties claim poverty as a reason to take the deposition in Chicago or Springfield. The Court suggests that the Defendants employ video-conferencing to take the deposition or that they use one of the Assistant Attorney Generals located in Chicago to conduct the deposition.

For these reasons, the Motion for Extension of Time is **GRANTED** (Doc. 33), the Motion to Compel is **DENIED** (Doc. 34) and the Motion Opposing Defendants' Motion to Compel is **MOOT** (Doc. 35). The last motion is merely a response to the Motion to Compel and has been considered as such. The discovery deadline is extended to **April 15, 2016** for the sole purpose of taking Plaintiff's deposition.

IT IS SO ORDERED.

DATED: March 15, 2016



DONALD G. WILKERSON
United States Magistrate Judge