IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MIHAELA DRASOVEAN	:	
v.	:	Civil Action No. DKC 11-1288
EATON CORPORATION	:	

MEMORANDUM OPINION AND ORDER

Presently pending and ready for review in this employment discrimination case is the motion for an extension of time to file expert designations filed by Plaintiff Mihaela Drasovean (ECF No. 44).

Plaintiff filed suit against Defendant Eaton Corporation ("Eaton") on March 29, 2011, in the Circuit Court for Prince George's County, Maryland. After removal to this court (ECF No. 1), Eaton answered on May 16, 2011 (ECF No. 7). A scheduling order was entered the following day, which established, among other things: (1) a July 18, 2011 deadline for Plaintiff to designate expert witnesses pursuant to Fed.R.Civ.P. 26(a)(2); and (2) a September 29, 2011 deadline for the close of discovery. (ECF No. 9, at 2). Upon consent of the parties, the deadline for discovery was later extended, first to October 31, 2011, then to December 30, 2011, and finally to January 17, 2012. (ECF Nos. 16, 24, 28).

On February 28, 2012 – after the close of discovery – Plaintiff's attorney filed a motion to withdraw as counsel. (ECF No. 32). That motion was granted the same day, and Plaintiff was advised that the case would proceed with her acting as her own attorney. (ECF No. 33). Plaintiff's subsequent request for "a 90 (ninety) day period to allow [her] to identify another attorney" (ECF No. 34) was granted, and the dispositive motions deadline was re-set for June 1, 2012. (ECF No. 37).

On May 30, 2012, Plaintiff's new counsel, Bruce Bender, entered his appearance. (ECF No. 38). The parties' joint request to extend the dispositive motions deadline to August 1, 2012 was granted the next day. (ECF No. 40). On August 1, 2012, Eaton filed a motion for summary judgment. (ECF No. 41). Two months later, on October 1, Plaintiff filed the instant motion, seeking belatedly to designate two experts "solely on the issue of damages" and to re-open expert discovery until March 31, 2013. (ECF NO. 44 ¶¶ 3, 8). Defendant opposes these requests. (ECF No. 45).

Fed.R.Civ.P. 16(b) governs the modification of a scheduling order. District courts have broad discretion to manage the timing of discovery. *Ardrey v. United Parcel Service*, 798 F.2d 679, 682 (4th Cir. 1986), *cert. denied*, 480 U.S. 934 (1987). The only formal limitation on this discretion is that a party

seeking modification must demonstrate good cause. Fed.R.Civ.P. 16(b)(4). "Good cause" is established when the moving party shows that she cannot meet the deadlines in the scheduling order despite diligent efforts. *Potomac Elec. Power Co. v. Elec. Motor Supply, Inc.*, 190 F.R.D. 372, 375 (D.Md. 1999) (quoting *Dilmar Oil Co., Inc. v. Federated Mut. Ins. Co.*, 986 F.Supp. 959, 980 (D.S.C. 1997), *aff'd by unpublished opinion*, 129 F.3d 116 (Table), 1997 WL 702267 (4th Cir. 1997)). Indeed, although other factors may be considered (*e.g.*, the length of the delay and whether the non-moving party could be prejudiced by the delay), *Tawwaab v. Va. Linen Serv., Inc.*, 729 F.Supp.2d 757, 768–69 (D.Md. 2010), "the primary consideration . . . in [determin]ing whether 'good cause' has been shown under Rule 16(b) relates to the movant's diligence," *Reyazuddin v. Montgomery Cnty., Md.*, No. DKC 11–0951, 2012 WL 642838, at *3 (D.Md. Feb. 27, 2012). Lack of diligence and carelessness are the "hallmarks of failure to meet the good cause standard." *W. Va. Hous. Dev. Fund v. Ocwen Tech. Xchange, Inc.*, 200 F.R.D. 564, 567 (S.D.W.Va. 2001). "If [the moving] party was not diligent, the inquiry should end." *Marcum v. Zimmer*, 163 F.R.D. 250, 254 (S.D.W.Va. 1995).

Plaintiff argues that modification of the scheduling order is warranted here because she "recently" hired new counsel in June 2012, who "became aware that the prior counsel failed to

designate experts on the issue of damages." (ECF No. 44 ¶ 2). Plaintiff further contends that allowing her belatedly to name experts will not prejudice Defendant because there will be "ample opportunity to depose" the witnesses after a decision on Eaton's summary judgment motion is issued. (*Id.* ¶ 6).

Defendant, in turn, contends that the retention of new counsel does not warrant modification of the scheduling order because Plaintiff was previously represented by competent counsel. (ECF No. 45, at 2). Defendant points out that it has already consented to numerous extensions in this "drawn-out matter" to accommodate Plaintiff's changes in representation. (*Id.* at 2-3). Defendant further argues that granting Plaintiff's request would be highly prejudicial, as it would "significantly delay the trial of this matter by at least another six to eight months" and "would hinder the way in which Eaton is able to respond to any expert designations" given that the deadline for discovery has long since passed. (*Id.* at 3-4). In Defendant's view, simply re-opening discovery so that Eaton could depose any belatedly named experts would not cure such prejudice. (*Id.*).

Based on these arguments, Plaintiff fails to establish good cause for modifying the scheduling order. Most critically, Plaintiff has not demonstrated that she exercised diligence in attempting to meet the original deadline for her Rule 26(a)(2)

disclosures. All she offers by way of explanation is the purported negligence of her prior attorney and the time it took for her to retain new counsel. It is well-established, however, that a party "is not entitled to modification of the scheduling order because she is [] dissatisfied with the actions of her former counsel." *Dent v. Montgomery Cnty. Police Dep't*, No. DKC 08–0886, 2011 WL 232034, at *2 (D.Md. Jan. 24, 2011); *see also Sall v. Bounassissi*, No. DKC 10–2245, 2011 WL 2791254, at *3 (D.Md. July 13, 2011) ("[T]he ordinary rule is that simple carelessness, inadvertence, or attorney error does not amount to good cause justifying a modification of the scheduling order.").[1] Similarly, "[t]he entry of new counsel [does not], standing alone, justify a finding of good cause." *Id.* What is more, even though Mr. Bender was retained by Plaintiff in May 2012, he waited nearly five months to file this motion attempting to rectify his predecessor's purported mistake. This delay can hardly be characterized as a diligent effort to meet the deadline for Plaintiff's expert disclosures, which passed more than fifteen months ago.

[1] It is true that an attorney's complete abandonment of a client "presents a different situation than a mere mistake or a strategic misjudgment" and may constitute "good cause" in "exceptional circumstances." *Sall*, 2011 WL 2791254, at *3. Plaintiff offers no argument that her situation presents such extraordinary circumstances.

Although the good cause inquiry can end here, it is also worth noting that allowing belated expert witness designations would prejudice Defendant. At this stage in the litigation, when discovery has been closed for over nine months, it would be unfair to force Defendant to participate in additional discovery.

Accordingly, it is this 5th day of November, 2012, by the United States District Court for the District of Maryland, ORDERED that:

1. Plaintiff's motion for an extension of time to file expert designations (ECF No. 44) BE, and the same hereby IS, DENIED; and

2. The clerk is directed to transmit copies of this Memorandum Opinion and Order to counsel for the parties.

/s/
DEBORAH K. CHASANOW
United States District Judge