IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Sara Jane Jones-McNamara,	:	
Plaintiff,	:	
v.	:	Case No. 2:13-cv-616
Holzer Health Systems,	:	JUDGE GREGORY L. FROST Magistrate Judge Kemp
Defendant.	:	

ORDER

This case is currently before the Court for a ruling on Defendant Holzer Health Systems' motion to extend the deposition of Plaintiff Sally Jones-McNamara. That motion was filed on July 18, 2014, and with the filing of the reply brief on July 30, 2014, is ready to decide. Having reviewed the entire deposition, the Court finds that good cause exists for a brief extension, and therefore grants the motion (Doc. 52) to the extent set forth below.

Some brief background is in order. Ms. Jones-McNamara was deposed on June 25, 2014. The deposition lasted a full day. Very shortly before the end of the day, Holzer's counsel stated that he could not finish the deposition that day and reserved the right to reconvene it to ask additional questions. Fed.R.Civ.P. 30(d) provides that, unless otherwise stipulated to by the parties or ordered by the Court, a deposition "is limited to 1 day of 7 hours." Ms. Jones-McNamara's counsel did not stipulate to any significant amount of additional questioning, and the parties have been unable to resolve their disagreement about whether more deposition time is appropriate. That disagreement led to the motion to extend.

Holzer's argument can be stated fairly simply. Pointing to language in Rule 30(d)(1) requiring the Court to "allow additional time consistent with Rule 26(b)(2) if needed to fairly examine the deponent," Holzer notes that these reasons justify an extension of the deposition: (1) the complaint is lengthy; (2) it contains six causes of action; (3) a large number of documents have been produced in this case; (4) Holzer was not able to question Ms. Jones-McNamara about her damages or mitigation efforts due to time constraints; (5) for the same reason, Holzer was not able to ask about post-termination emails which show "odd behavior" on the part of Ms. Jones-McNamara (see Doc. 52, at 4); (6) Ms. Jones-McNamara provided long, unresponsive, and rambling narratives in response to many questions posed to her; and (7) Holzer will not be able to prepare comprehensively for either summary judgment motions or trial without Ms. Jones-McNamara's additional testimony. In opposing the motion, Ms. Jones-McNamara argues that the deposition would have been more efficient had Holzer supplied exhibits in advance, as she asked it to do, that this is not the type of case which the Advisory Committee Notes refer to when suggesting that some depositions might need to exceed the seven-hour limit, and that Holzer chose to waste time on inconsequential matters.

The Advisory Committee Notes to the 2000 amendments to the Rules of Civil Procedure state that the party seeking a deposition longer than the Rules permit "is expected to show good cause to justify such an order." The Notes indicate that the limit had been imposed in order to reduce cost and delay in the discovery process, but they also recognize that in some situations an extension will be needed, especially if the events to be inquired about took place over a lengthy period of time, or if the witness is provided documents in advance but fails to review them, thus prolonging the deposition with activity which

should have taken place before the deposition began. The cases are generally consistent with these principles, but also place a burden on the requesting party to show that he or she acted diligently in attempting to complete the deposition within the time allotted by Rule 30(d)(1). See, e.g., Beneville v. Pileggi, 2004 WL 1631358 (D. Del. July 19, 2004) (the moving party has the burden to demonstrate that additional time is necessary).

It is always difficult for a reviewing Court to determine if a deposition could reasonably have been completed in seven hours. The written transcript does not always reflect the nuances of the deposition, including delays in answering, the pace of the dialogue, or other matters. At best, it gives a somewhat incomplete picture of what occurred. Further, it is hard for a reviewing Court, even one fairly conversant with the issues in the case, to draw lines between topics that are of primary significance to one party's theory of the case or its defense to the plaintiff's claims and those which are secondary, and to state definitively that a certain amount of deposition time spent on one subject should have been condensed or should have been accorded lesser priority. That having been said, it is still the Court's obligation to make such judgments when called upon to rule on a motion brought under rule 30(d)(1).

The Court's impressions, from reading the transcript, are these. First, Holzer appeared to spend an inordinate amount of time at the outset of the deposition questioning Ms. Jones-McNamara about her past work, her credentials, and her family background. Little was asked about the operative facts of this case until a substantial amount of time had passed. Second, Holzer proceeded at a pace, and in the type of detail, which did not appear to take into account that there was a presumptive time limit on the deposition. One of the reasons why that limit, and similar limits on interrogatories and on discovery in general,

were imposed, was to alter the prior behavior of litigants in a way which achieves greater efficiency in the discovery process and which curbs the potential for discovery abuse. This deposition, however, seemed to have been taken in the same manner as depositions taken prior to the change in the Civil Rules would have gone forward. Third, the choice to ask essentially no questions about key issues such as damages, and to spend significant amounts of time on issues like Ms. Jones-McNamara's single violation of dress code by wearing open-toed shoes to a meeting, strikes the Court as inconsistent with the needs of the case, even taking into account that the Court is not as well aware of the defense strategies as is Holzer's counsel. Fourth, the written transcript does not really bear out Holzer's claim that the answers were rambling or non-responsive. Rather, Ms. Jones-McNamara seemed to make a good faith effort to answer questions which, at times, called for very broad responses. Overall, the Court is left with the firm impression that the deposition could and should have been conducted much more efficiently than it was.

That does not, however, completely resolve the issue raised by Holzer's motion. Even if the deposition had been more focused, or focused on more important issues, it does not appear that seven hours would have been enough time for Holzer reasonably to explore all of the issues raised in the complaint, to question Ms. Jones-McNamara thoroughly about damages and mitigation, and to delve into her background with her immediate past employer, which may be relevant to an after-acquired evidence defense. Given the importance of these subjects, the Court will allow an additional two hours of deposition time. However, because Holzer could have anticipated beforehand that some additional time might have been needed, and because arrangements might have been made to accomplish the deposition in

a single day (even if longer than seven hours), the Court does not believe that Ms. Jones-McNamara or her counsel should be penalized by having to reconvene the deposition. Counsel are therefore instructed to take all reasonable steps to reduce the cost of the reconvened deposition, including using technologies such as telephonic or remote video means, or taking the deposition at a location most convenient to Ms. Jones-McNamara and her counsel. If the parties cannot reach agreement as to such matters, they shall still proceed expeditiously with the deposition in order to keep the case on track, but the Court will consider a motion for reimbursement of expenses incurred by Ms. Jones-McNamara or her counsel in connection with the additional deposition.

For all of these reasons, the Court grants the motion to extend deposition time (Doc. 52) to this extent: any reconvened deposition shall last not more than two hours; it shall be completed in such a way as not to delay the current case schedule, preferably within two weeks of the date of this order; and counsel shall work cooperatively to reduce any additional costs imposed on Ms. Jones-McNamara and her counsel by the reconvened deposition.

Any party may, within fourteen days after this Order is filed, file and serve on the opposing party a motion for reconsideration by a District Judge. 28 U.S.C. § 636(b)(1)(A), Rule 72(a), Fed. R. Civ. P.; Eastern Division Order No. 14–01, pt. IV(C)(3)(a). The motion must specifically designate the order or part in question and the basis for any objection. Responses to objections are due fourteen days after objections are filed and replies by the objecting party are due seven days thereafter. The District Judge, upon consideration of the motion, shall set aside any part of this Order found to be clearly erroneous or contrary to law.

This order is in full force and effect even if a motion for reconsideration has been filed unless it is stayed by either the Magistrate Judge or District Judge. S.D. Ohio L.R. 72.3.

/s/ Terence P. Kemp
United States Magistrate Judge