



Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
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STEVEN LISS

Plaintiff

v.

CLEVELAND STATE UNIVERSITY

Defendant

Case No. 2013-00139

Magistrate Holly True Shaver

ORDER OF THE MAGISTRATE

2014 AUG 28 PM 1:44

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COURT OF CLAIMS
OF OHIO

On August 1, 2014, plaintiff filed a motion to compel defendant to produce Ronald Berkman, Ph.D., president of defendant, Cleveland State University, for deposition. On August 13, 2014, defendant filed a response in opposition.

In his motion, plaintiff states that he noticed Dr. Berkman for a deposition, that defendant failed to produce Dr. Berkman at the scheduled time, and that defendant failed to file any motion for a protective order.

In its response, defendant contends that Dr. Berkman was not properly noticed for a deposition, and that Dr. Berkman is a high-ranking official with little direct knowledge of the facts underlying the lawsuit, so that his deposition is not warranted.

Civ.R. 30(A) states, in relevant part:

“After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. The attendance of a witness deponent may be compelled by the use of a subpoena as provided by Civ.R. 45. The attendance of a party deponent may be compelled by the use of a notice of examination as provided by division (B) of this rule.”

Plaintiff attached his notice of deposition of Dr. Berkman with his motion. Upon review, inasmuch as Dr. Berkman is not a party in this matter, the proper mechanism to compel his attendance at a deposition is by use of a subpoena. Therefore, the court finds that plaintiff failed to properly compel Dr. Berkman's attendance at deposition.

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2014 AUG 28 PM 1:44

Case No. 2013-00139

- 2 -

ORDER

Furthermore, in response to plaintiff's motion, defendant filed the affidavit of Dr. Berkman, wherein he avers that although he signed two letters concerning plaintiff's employment, he did not prepare either letter himself and has no independent recollection of either event.

"Depositions of high-level government officials are permitted * * * upon a showing that: 1) the deposition is necessary in order to obtain relevant information that cannot be obtained from any other source and 2) the deposition would not significantly interfere with the ability of the official to perform his or her governmental duties. The essential considerations on whether a high-ranking official will be deposed are the availability of this information through alternative sources and the official having unique personal knowledge that cannot be obtained elsewhere or through others. Stated another way, 'a party may only obtain the deposition of a high level official by showing that official has particularized first-hand knowledge that cannot be obtained from any other source.'" (Internal citations omitted.) *New York v. Oneida Indian Nation of N.Y.*, N.D.N.Y. No. 95-CV-0554, 2001 U.S. Dist. LEXIS 21616, *8-9 (Nov. 9, 2001).

Upon review of the motion and the response, the court finds that plaintiff has failed to show that Dr. Berkman's deposition is necessary in order to obtain relevant information that cannot be obtained from any other source. Therefore, plaintiff's motion to compel is DENIED.

The court notes, however, that defendant has agreed to allow Dr. Berkman to submit to a deposition on written interrogatories, if desired. Plaintiff is GRANTED leave to submit any written interrogatories regarding Dr. Berkman to defendant on or before *September 19, 2014*.



HOLLY TRUE SHAVER
Magistrate

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COURT OF CLAIMS
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2014 AUG 28 PM 1:44

Case No. 2013-00139

- 3 -

ORDER

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