



Court of Claims of Ohio

The Ohio Judicial Center
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DAVID A. BENTKOWSKI

Plaintiff

v.

OHIO LOTTERY COMMISSION

Defendant

Case No. 2014-00651

Judge Patrick M. McGrath

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On August 25, 2015, non-party Jai Chabria (Chabria) filed a motion pursuant to Civ.R. 45(C)(3) to quash the subpoena seeking his deposition for August 31, 2015. The court has not received a response from plaintiff.

Civ.R. 45(C)(3) states, in pertinent part:

“On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following: * * *

“(d) Subjects a person to undue burden.”

In his motion and attached affidavit, Chabria states that he is not a party to the litigation, is not an employee of defendant, and cannot provide independent testimony that is relevant to the litigation. Furthermore, Chabria states that requiring him to attend the deposition is unduly burdensome because it will require him to travel to Cleveland as well as require him to be absent from his office for the day. Chabria also states that plaintiff has previously offered a check for \$33.40 to cover witness expenses, which is not sufficient to cover fees and mileage. Lastly, Chabria argues that the subpoena should be quashed because plaintiff is seeking discovery after the discovery cutoff date, which was set by the court for August 28, 2015.

“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

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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, the court finds the reasons Chabria provides are compelling and that the deposition of Chabria would not result in any independent, relevant evidence. The court further finds that any evidence obtained would be outweighed by the undue burden placed on him to travel to Cleveland, and that plaintiff is seeking discovery past the discovery deadline without leave of court. Accordingly, Chabria's motion is GRANTED, and the subpoena seeking his deposition for August 31, 2015, is hereby quashed.



PATRICK M. MCGRATH
Judge

cc:

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