IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	:	
Plaintiff,	:	
v.	:	CIVIL ACTION NO. 1:05-CV-2519-CCH
REGENCY HEALTH ASSOCIATES,	:	
Defendant.	:	

O R D E R

The above-captioned employment discrimination action is before the Court on Defendant's Motion to Quash and for Protective Order [32]. Defendant has asked this Court to quash Plaintiff's subpoena served on Mrs. Diane Alexander, to quash the deposition notice of Dr. Elmore Alexander, and to enter a protective order designating Mrs. Alexander as a corporate representative pursuant to Fed.R.Civ.P. 30(b)(6) and limiting Mrs. Alexander's deposition to two hours. For the reasons discussed below, Defendant's Motion to Quash and for Protective Order [32] is hereby **GRANTED IN PART AND DENIED IN PART.**

I. BACKGROUND FACTS

In this action, Plaintiff claims Defendant discriminated against its employee, Ms. Hani Mohamed, when it prohibited her from wearing a head scarf in accordance with her religious

beliefs and terminated her when she refused to stop wearing it. Complaint [1] at 1. Discovery was bifurcated by this Court's November 1, 2006 Order [37]. The only issue in the current phase of discovery is whether Defendant had enough employees during the relevant time period to qualify as a statutory employer within the meaning of Title VII.

On October 13, 2006, Plaintiff served Mrs. Alexander, Defendant's CEO, with a notice of deposition and attached *subpoena duces tecum*, in which it requested that Mrs. Alexander bring to her deposition "[a]ll documents, including but not limited to personnel records, payroll records, and time sheets, which reflect the amount of hours worked per week for each week" during the relevant time period for 21 listed individuals. See Motion to Quash [32] at Exhibit B. On the same day, Plaintiff served Dr. Alexander, Defendant's CFO, with a notice of deposition.

II. SUBPOENA SERVED ON MRS. ALEXANDER

Defendant requests that this Court quash the subpoena served on Mrs. Alexander, basing its objection on two grounds. First, Defendant states Plaintiff has sought the personnel documents using Fed.R.Civ.P. 45, which it states is the incorrect

mechanism for compelling a party to an action to produce documents because Rule 45 is addressed only to non-parties. Motion to Quash at 3. Instead, Defendant argues, Plaintiff should have requested the desired documents from Mrs. Alexander under Fed.R.Civ.P. 34, which applies to parties.

Plaintiff responds that it has properly requested that Mrs. Alexander bring the personnel documents with her to her deposition under Fed.R.Civ.P. 30(b)(1). That rule permits a party to serve a *subpoena duces tecum* along with a notice of deposition, requesting the production of documents at a party's deposition.[1] While utilizing Rule 34 is another (and perhaps more efficient) way to obtain documents to be used at a deposition (see Rule 30(b)(5)), the Court is unwilling to quash Mrs. Alexander's subpoena on the ground that Rule 34 is the only avenue available to a party to obtain documents to be used at a deposition from another party.

Defendant also objects to Plaintiff's subpoena because it requests the same documents that Plaintiff has already requested, and which Defendant has presumably produced. See

[1] Rule 30(b)(1) states, "If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to, or included in, the notice." Fed.R.Civ.P. 30(b)(1).

Motion to Quash at 4-5. While Rule 30 provides two means to obtain documents, the intent is not to require a party to produce the same documents twice. Thus, Defendant need only produce the documents sought in Plaintiff's Rule 30 subpoena that it has failed to produce in response to this Court's Order of September 6, 2006.

In sum, the Court finds no basis on which to quash Plaintiff's October 13, 2006 *subpoena duces tecum*, but limits Defendant's obligations thereunder to producing the documents subpoenaed that have not been otherwise produced prior to the deposition. Thus, Defendant's Motion to Quash the subpoena issued to Mrs. Alexander [32] is **GRANTED IN PART AND DENIED IN PART.**

III. DEPOSITION NOTICE OF DR. ALEXANDER

Defendant also requests that the Court quash Plaintiff's notice of deposition of Dr. Alexander. See Motion to Quash at 5-7. Defendant argues that any questions Dr. Alexander could answer would be duplicative of the questions Mrs. Alexander would answer anyway. Id. at 6-7. Further, Defendant states, Dr. Alexander is not as familiar with the administrative workings of his company as Mrs. Alexander, and thus would have

little personal knowledge about the number of employees Defendant had at any given time (the only relevant issue at this stage of discovery). Id.

Plaintiff counters that a deposition of Dr. Alexander is relevant to its contention that he may qualify as both an officer and an employee of his company, and may thus be included in the calculation of the number of Defendant's employees in 2003 and 2004. Pl.'s Response [40] at 5. Plaintiff states that it intends to depose Dr. Alexander with respect to his role in the company, and thus that he personally has relevant information that would not be duplicative of Mrs. Alexander's testimony. Id. at 5-6.

The Court finds that Plaintiff has shown good cause for deposing Dr. Alexander, as he personally has information relevant to Defendant's defense that it does not qualify as a statutory employer under Title VII. See Fed.R.Civ.P. 26(b)(1)(stating that parties are entitled to obtain discovery on matters "relevant to the claim or defense of any party"). Accordingly, Defendant's Motion to Quash [32] is hereby **DENIED** with respect to the deposition notice of Dr. Alexander.

IV. PROTECTIVE ORDER

Defendant also requests a protective order that would allow Defendant to designate Mrs. Alexander as Defendant's Rule 30(b)(6) corporate representative for the purposes of answering questions about Defendant's status as an "employer" under Title VII, and that would limit Mrs. Alexander's deposition to two hours. See Motion to Quash at 1.

Rule 30(b)(6) states that, in the event a notice of deposition names a corporation as the deponent, the named corporation may designate certain officers to testify on the corporation's behalf. Fed.R.Civ.P. 30(b)(6). This provision of the Federal Rules does not apply to the present dispute, however, because Plaintiff's notice of deposition is clearly addressed to "Diane Alexander," rather than to Regency Health Associates as an entity.[2] See Motion to Quash at Ex. B. The Court can find no reason why Rule 30(b)(6) is relevant to the notice of deposition of Mrs. Alexander.

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[2] It appears that Defendant may be attempting to limit the scope of Mrs. Alexander's deposition by designating her as the company's Rule 30(b)(6) representative for purposes of testifying about Defendant's employee records only. Plaintiff has already stated, however, that it does not intend to depose Mrs. Alexander only on the issue of employee time records, but also on the issue of Mrs. Alexander's own role in the company, for purposes of determining whether she personally should be considered an "employee" under Title VII.

Additionally, the Court finds no reason to limit Mrs. Alexander's deposition to two hours, as Defendant requests.[3] Defendant has not stated why a two hour limit would be necessary or even appropriate, particularly given that Plaintiff has stated its purpose in deposing Mrs. Alexander is twofold: (1) to inquire as to the time cards of the 21 employees listed in its *subpoena duces tecum*, and (2) to determine whether Mrs. Alexander should be counted as an employee as well as an officer of her company. See Motion to Quash at Ex. B; Pl.'s Response at 6-7.

In short, Plaintiff has good cause to depose Mrs. Alexander for up to seven hours on the limited issues being addressed in this stage of discovery. Accordingly, Defendant's Motion for Protective Order [32] is hereby **DENIED**.

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[3] The Court notes that the two deposition notices that were served on Dr. and Mrs. Alexander contemplated both depositions taking place on the same day, one at 10:00am and one at 1:00pm. While not conclusive, this indicates that Plaintiff has no intention of deposing Mrs. Alexander for more than several hours. Further, if Plaintiff establishes that Defendant is a statutory employer and discovery is scheduled on the merits of this case, the time Plaintiff utilizes in deposing Dr. and Mrs. Alexander at this stage of the case will apply against its presumptive seven hour limit. See Fed.R.Civ.P. 30(d)(2). Thus, Plaintiff will have an incentive to conduct an efficient deposition.

V. CONCLUSION

As discussed above, Plaintiff's *subpoena duces tecum* served on Mrs. Alexander is appropriate, subject to the limitations described *supra* at 3-4. Plaintiff has good cause to depose Dr. Alexander, and there is no good cause to limit Mrs. Alexander's deposition to two hours. Accordingly, Defendant's Motion to Quash and for Protective Order [32] is hereby **GRANTED IN PART AND DENIED IN PART**.

IT IS SO ORDERED this 7th day of November, 2006.

C. CHRISTOPHER HAGY
UNITED STATES MAGISTRATE JUDGE