

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

Case No. 3:03-cv-837-J-16HTS

and

CHRISTINE PICKELL,

Intervenor,

v.

CONAM MANAGEMENT CORPORATION,
d/b/a/ CONAM PROPERTY SERVICES,
LTD.,

Defendant.

O R D E R

This cause is before the Court on the Joint Motion for Protective Order and to Quash Defendant's Subpoenas (Doc. #14; Motion). Defendant opposes the Motion. See Defendant's Memorandum in Opposition to Joint Motion for Protective Order and to Quash Defendant's Subpoenas (Doc. #17; Opposition). Since Plaintiff, United States Equal Employment Opportunity Commission (EEOC), and Intervenor, Christine Pickell (Pickell) (collectively, Plaintiffs) had not been afforded an opportunity to reply to a timeliness issue raised by the Opposition, they were directed to address the issue

and, if necessary, the existence of good cause excusing any untimeliness. See Order (Doc. #23) at 2-3. Plaintiffs' Joint Response to Court Order Dated June 25, 2004 (Doc. #24; Response) was thereafter filed. Defendant then sought leave to file a reply to the Response, see Defendant's Motion for Leave to Reply to Plaintiff's and Intervenor's Joint Response to Court Order Dated June 25, 2004 (Doc. #25), and was permitted to do so. See Order (Doc. #29) (directing Clerk to file Defendant's Reply to Plaintiffs' Joint Response to Court Order Dated June 25, 2004 (Reply), which became Doc. #30).

As the Court has already observed, a motion for protective order must be filed timely. See Order (Doc. #23) at 2 (quoting *Brittain v. Stroh Brewery Co.*, 136 F.R.D. 408 (M.D. N.C. 1991) and citing *Williams v. American Telephone and Telegraph Co.*, 134 F.R.D. 302 (M.D. Fla. 1991)); see also *Maxey v. General Motors Corp.*, No. CIV. A. 3:95CV60-D-A, 1996 WL 692222, at *1 (N.D. Miss. Nov. 18, 1996); *Berry v. Baca*, No. CV01-02069 DDP (SHX), 2002 WL 1777412, at *2 (C.D. Cal. July 29, 2002). Communicating to opposing counsel a party's objections to production, without timely bringing the matter to the attention of the Court, is not adequate under Federal Rule of Civil Procedure (Rule) 26(c). See *Maxey*, 1996 WL 692222, at *2. A motion for a protective order is generally untimely if it is made after the date the discovery material was to be produced.

See, e.g., id. at *1; *cf.* Middle District Discovery (2001) at 20 (party has a duty to seek protective order "immediately, i.e., without waiting until the discovery is due or almost due").¹ Still, if the party seeking the protective order can establish good cause for an untimely motion, the Court may grant the relief sought. *See Maxey*, 1996 WL 692222, at *2.

Plaintiffs concede that, pursuant to Rule 26(c), a timely motion for a protective order of this nature "is one filed on or before the due date for the production at issue." Response at 3. Nevertheless, they argue the Motion was filed in a timely manner. *See id.* at 1. Specifically, Plaintiffs contend "[c]ontrary to Defendant's assertions, the information at issue in Plaintiffs' Joint Motion to Quash was due to be produced on February 26, 2004." *Id.* Defendant maintains that "for Pickell and EEOC's Joint Motion to be timely, it needed to be served on or before February 23, 2004." Opposition at 5. However, according to Plaintiffs, "after conferring extensively with Defendant on this matter, the undersigned EEOC counsel as well as the undersigned Intervenor's counsel had the clear understanding that the production date was February 26, 2004." Response at 3.

¹ While Plaintiffs ask both for a protective order and an order quashing the subpoenas, the timeliness analysis in either case is the same. *See* Rule 45(c)(3)(A) ("On *timely* motion, the court . . . shall quash or modify the subpoena if") (emphasis added).

While Defendant concedes it extended the date for responding to the subpoenas to February 23, there is no evidence, other than the allegations contained in Plaintiffs' Response, that the deadline was further extended to February 26. Significantly, Plaintiffs repeatedly avoid stating that Defendant actually informed them the deadline had been extended to February 26. Even in the Response and subsequent Motion in Opposition to Defendant's Motion for Leave to Reply to Plaintiff's and Intervenor's Joint Response to Court Order Dated June 25, 2004 (Doc. #27; Motion in Opposition), they speak only of having obtained, through unspecified means, an understanding of the new deadline. See Response at 3, 4; Motion in Opposition at 4. While Plaintiffs reference a letter to establish "Defendant agreed not to serve the subpoenas until after [] discussion," Response at 2, the letter, a copy of which seems to be attached as Exhibit C to the Opposition, expresses no such agreement. It is thus found Plaintiffs have not demonstrated the Motion was filed in a timely manner.

Arguing in the alternative, Plaintiffs contend "the evidence of record clearly demonstrates that Plaintiffs' conduct in this matter comports with the intent of the timeliness requirement" as "the issue would only be moot if Defendant had already received *and* viewed the documents at issue." Response at 4. They claim they "fulfilled [the] purpose [of Rule 26(c)] by ensuring that Defendant

did not view the discovery in dispute prior to the court ruling" on the Motion. *Id.* Defendant replies that "[u]nder Plaintiff's logic, any motion for protective order or motion to quash would be considered 'timely,' no matter how long the movant waited to file such a motion, as long as the relevant dispute was still unresolved." Reply at 6.

The Court agrees with Defendant and finds its decision temporarily to refrain from reviewing the materials subpoenaed did not extinguish Plaintiffs' duty to file their motion in a timely manner. To hold otherwise would put at a disadvantage those attorneys who subscribe to the highest standards of ethics and civility. It is clear, then, that Plaintiffs have neither filed a timely motion for protective order nor demonstrated good cause to excuse such failure.

In accordance with the foregoing, it is

ORDERED:

The Motion (Doc. #14) is **DENIED**.

DONE AND ORDERED at Jacksonville, Florida this 30th day of August, 2004.

/s/ Howard T. Snyder
HOWARD T. SNYDER
UNITED STATES MAGISTRATE JUDGE

Copies to:
Counsel of Record and
pro se parties, if any