

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

Jesse C. Jones, Complainant, v. De Witt Nursing Home, Respondent;  
8 U.S.C. § 1324b Proceeding; Case No. 88200202.

**ORDER IN PART GRANTING AND IN PART DENYING DISCOVERY  
(April 28, 1989)**

On November 16, 1988, complainant filed his complaint in this proceeding. Notice of Hearing was issued on November 22, 1988. Respondent filed an answer dated December 9, 1988. By order issued on February 7, 1989, a telephonic prehearing conference was held on March 2, 1989, as summarized in my Prehearing Conference Report and Order issued March 3, 1989. As agreed during the conference and as confirmed by my Report, a further telephonic prehearing conference has been scheduled for 10:00 a.m., EDT on June 6, with a hearing to be held in New York City starting on June 19, 1989.

References to either party in this Order are to respective counsel as appropriate.

By Notice of Motion and Affidavit dated March 23, 1989, respondent has sought a protective order addressed to complainant's entire First Request for Production for Documents dated March 16, 1989. Prior to filing that pleading, respondent had made inquiry of my staff concerning the appropriate practice by which to raise objections to the complainant's discovery and was advised of the procedures set out in the rules of practice and procedure, 28 C.F.R. Part 68. Because notice of motion practice is not contemplated by the rules, I issued on March 29, 1989, a Notice Concerning Respondent's Motion For Protective Order which provided that the March 23 pleading was to be treated as a motion (for a protective order) to be answered in written pleading form, if at all, to be received by me not later than April 7, 1989.

Respondent filed a similar Notice of Motion and Affidavit, dated March 31, 1989, addressed to the entirety of complainant's First Set of Interrogatories dated March 20, 1989. On April 6, 1989, com-

plainant by telephone to my office, reciting that respondent did not object, asked for an extension of time to respond. Accordingly, I issued on April 7, 1989, an Order Confirming Extension of Time to File Response to Motions for Protective Orders, advising that, absent a consensual disposition of the discovery issues between the parties, complainant could have until April 21, 1989, to respond to both notices of motion ``as motions for relief from discovery.''

By transmittal letter dated April 21, 1989, complainant has filed its Memorandum of Points and Authorities in Opposition to Respondent's Motion for an Order of Protection. To dispose of the discovery issues I treat the transmittal with attached memorandum as the full response to respondent's two pending motions. I understand the recitation in the transmittal letter that ``I have served all the parties . . .'' as a certificate of service as to the letter, in addition to the certificate in usual form attached to the memorandum. The parties are cautioned to adhere to the rules of practice and procedure set out at 28 C.F.R. Part 68, and to address the bench in pleadings form, not through correspondence.

Complainant's April 21 communication suggests that the case will not be ready for trial scheduled to begin on June 19 because of delay as the result of the discovery motion practice.

Upon consideration of the pleadings filed before me, I make the following determinations.

1. I do not lightly abandon the schedule previously set. Complainant did not need to delay initiating discovery from the December 9, 1988 date of respondent's answer until its First Request of March 16, 1989. Moreover, at the time of the prehearing conference, complainant had in mind the extent of its discovery desires. Nor do I have reason to conclude that respondent's motions were not filed in good faith. However, in view of the extent of discovery initiated, I agree with complainant's April 21, 1989 entreaty that the hearing dates be postponed. The prehearing conference scheduled for June 6, 1989, remains on the calendar. This order postpones the prehearing statements previously scheduled to be filed May 30, 1989, until a date to be set during the prehearing conference.

2. So much of the submissions by each party as comprise pejorative or ad hominum characterizations of the other or which are cast in broad and conclusory rhetoric are disregarded.

3. This proceeding is governed by the rules of practice and procedure of this Office.

4. Respondent having moved, in effect, for protective orders, complainant having responded, there is no need for further filings by either party. Consistent with the usual practice, as contemplated at 28 C.F.R. § 68.7(c), this Order issues, with no need in my judgment

for oral argument or further exchange of pleadings, pursuant to 28 C.F.R. §§ 68.14(c) and 68.40(a). (The foregoing notwithstanding, at the oral request of respondent on April 26, my staff made an unsuccessful effort to obtain complainant for a telephone conference on either that date, or the early morning, of April 27.)

5. So much of respondent's objections to the First Request for Production of Documents as allege generalized burden of irrelevancy is overruled. Respondent will respond as follows:

To Request #1 except that documents as to which the attorney-client privilege or work product privilege is asserted will be specifically identified and, having been identified, may be withheld.

To Request #2.

To Request #3, to the extent that production is not duplicative of production pursuant to Request #2.

To Requests #4 and #5.

To Request #6, to the extent that the materials requested, or portions thereof, relate to employment of individuals in context of the employer sanctions program enacted at 8 U.S.C. § 1324a, and implementing regulations of the Immigration and Naturalization Service.

To Request #7, subject to the same qualification recited with respect to Request #1.

To Requests #8 through 11 to the extent that production is not duplicative of production pursuant to Request #2.

To Request #12 subject to the same qualification recited with respect to Requests #1 and #7, and production is not duplicative of production pursuant to Request #2.

To Requests #13 and #14.

To Requests #15 through 17 but only to the extent that they involve policies, practices, or procedures concerning individuals in the employ of respondent after November 6, 1986.

To Request #18, but only with respect to employment after November 6, 1986.

To Request #19.

To Request #20, except for items (a) and (b).

[Request #21 omitted].

To Request #22.

6. Except as provided below, the contentions in respondent's objections to Complainant's First Set of Interrogatories are overruled. Respondent will respond as follows (except to the extent that respondent identifies with particularity those documents provided in response to Complainant's First Request For Production of Documents as directed at paragraph 5 of this Order rather than repeating the text of such documents in reply to Interrogatories):

To Interrogatory #1.

To Interrogatory #2 except that the timeframe shall be only from November 6, 1986 to the present.

To Interrogatories #3 and #4.

To Interrogatory #5 but only with respect to those policies, procedures, rules, regulations and practices in effect after November 6, 1986.

To Interrogatory #6.

To Interrogatory #7 but to reduce burden, identify only the names and positions of those employees responsible for maintaining I-9 forms. It appears unduly burdensome at this juncture to compel response as to dates respondent first sought to obtain and actually received each I-9 if any.

Interrogatories ##8 through 15 are rejected as immaterial.

To Interrogatory #16 only as to Interrogatories #6 and #7.

To Interrogatory #17 except that (a) is deleted and so much of (b) is also deleted as pertains to the period prior to November 7, 1986.

To Interrogatory #18 subject to the same limitation as pertains to Interrogatory #17.

To Interrogatory #19 except that identification by national origin and race need not be provided and the timeframe shall include only the period after November 6, 1986.

Interrogatories #20 and #21 are rejected as immaterial.

To Interrogatory #22 but only as to (e), (f), and (g).

Interrogatory #23 is rejected as burdensome as not likely to lead to the discovery of relevant evidence.

To Interrogatories #24 through #27.

To Interrogatory #28 except that identification by race need not be provided.

Interrogatory #29 is rejected as immaterial except as to ``immigration/citizenship status'' since November 7, 1986.

To Interrogatory #30 within the context of Interrogatory #29.

To Interrogatory #31 as to (c) only [(a) and (b) not clearly material].

Interrogatories ##32, 33, and 34 are rejected as immaterial.

**SO ORDERED.**

Dated this 28th day of April, 1989.

MARVIN H. MORSE  
Administrative Law Judge