

TEMITOPE OGUNRINU,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 19B00032
	)	
LAW RESOURCES & ARNOLD & PORTER	)	
KAYE SCHOLER LLP,	)	
Respondent.	)	
	)	

This Court's order was abundantly clear: Complainant was to make herself available either in person or virtually. "In person or virtually" cannot, in any reasonable interpretation of the words, mean telephonic. Complainant's excuses for not being able to appear by videoconference are disingenuous. Complainant found a way to appear before this office via videoconference for several conferences; that suddenly she cannot do so when it is for a deposition that she had to be

compelled to attend begs credulity. Additionally, her attempt to parse the word “virtually” to actually mean using a virtual platform without video does not merit comment.

While Complainant has not sought an amendment to this Court’s clear order, the Court will consider whether it should change course. While courts have ordered telephonic depositions over the objection of opposing counsel, the cases involved balancing the cost of requiring a deponent to travel at great expense with the difficulties of taking a deposition telephonically. *See Hsiah v. PMC-Sierra, Inc.*, 9 OCAHO no. 1084 (2012). While one court has appeared to promote telephonic depositions, *Jahr v. IU Intern Corp.* 109 F.R.D. 429 (M.D. N. C.1986), others have found that a deposition by telephone would be prejudicial, *Webb v. Green Tree Servicing, LLC*, 283 F.R.D. 276 (D. Md. 2012). In the *Webb* case, the two relevant factors were the existence of a great number of exhibits, and the inability to observe demeanor and facial expressions of the deponent. *Id.* at 278.

When exercising its discretion, this Court “must balance claims of prejudice and those of hardship and conduct a careful weighing of the relevant facts.” *Learning Res., Inc. v. Playgo Toys Enterprises Ltd.*, No. 19-CV-00660, 2020 WL 3250723, at \*1 (N.D. Ill. June 16, 2020) (citations and quotation marks omitted). Complainant is not arguing hardship, or even cost. While the Court is not deaf to concerns about the availability of appropriate technology, Complainant’s argument about her “work” computer is vague and unreasonable since she previously used it quite successfully to appear virtually in this case. She has not explained why it suddenly cannot be used in this manner. Additionally, Complainant rejected Respondents’ offer to provide a laptop to Complainant for this very purpose because they require that Complainant sign an indemnification agreement. Her unwillingness to guarantee return of a piece of equipment without harm is likewise unarticulated, and she has not apparently offered or sought any other solutions to remedy her alleged lack of video teleconference technology. Respondents cited to prejudice in that telephonic depositions are far inferior to face-to-face depositions. Even so, Respondents are not insisting upon face-to-face, video conference will do. As Complainant would be the central witness were the case to go to hearing, the ability to observe demeanor and facial expressions is important. *United States v. Real Prop. Located at 700 N. 14th St., Springfield, Illinois*, No. 12-CV-3052, 2013 WL 5595952, at \*2 (C.D. Ill. Oct. 11, 2013). As Respondents have cited prejudice and Complainant’s factors have little merit, the Court compels Complainant to appear at the deposition either in person or virtually, meaning via video teleconference.

The Court further finds that it previously compelled Complainant to appear for the deposition in the manner set forth in this Order, and the Complainant’s objections are obstreperous.

*See* September 10, 2020 Order on Mots. Compel and Protective Order. Should the Complainant not appear, the Court will impose appropriate sanctions pursuant to 28 C.F.R. § 68.23(c).

SO ORDERED.

Dated and entered on September 15, 2020.

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Jean C. King  
Chief Administrative Law Judge