

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMELIA E. VERESS : CIVIL ACTION
 :
 v. :
 :
 ALUMAX/ALCOA MILL PRODUCTS, :
 INC. : NO. 01-2430

MEMORANDUM ORDER

Plaintiff claims that she was subjected to a hostile work environment based upon her sex and national origin. She arrived for her scheduled deposition with her attorney and Steve Shearer, her boyfriend. Defendant refused to proceed with the deposition with Mr. Shearer present. Mr. Shearer is presently employed by defendant and has filed a separate lawsuit against it in which he claims that he was retaliated against for complaining about the manner in which defendant treated Ms. Veress. Presently before the court is defendant's motion for a protective order seeking to sequester Mr. Shearer during plaintiff's deposition.

The court may "for good cause shown" order, inter alia, "that discovery be conducted with no one present except persons designated by the court." Fed. R. Civ. P. 26(c). The court's discretion in this regard, however, should be invoked sparingly. See Kerschbaumer v. Bell, 112 F.R.D. 426, 426 (D.D.C. 1986).

A movant is required to make a "particular and specific" showing of good cause. U.S. v. Garrett, 571 F.2d

13223, 1326 n.3 (5th Cir. 1978). See also BCI Communication Systems, Inc. v. Bell Atlanticom Sys., Inc., 112 F.R.D. 154, 160 (N.D. Ala. 1986); Skidmore v. Northwest Engineering Co., 90 F.R.D. 75, 76 (S.D. Fla. 1981). Courts, for example, have found good cause to restrict who may be present when the deponent is likely to be intimidated by a prospective attendee, see Bucher v. Richardson Hosp. Auth., 160 F.R.D. 88, 95 (N.D. Tex. 1994), or where the privacy interests of a party or deponent would be compromised. See Gottlieb v. County of Orange, 151 F.R.D. 258, 260 (S.D.N.Y. 1993).

Defendant argues that it will be unfairly prejudiced because Mr. Shearer will have the opportunity to tailor his testimony to that of Ms. Veress and to better prepare for the type of questions he will be asked at his deposition. Defendant notes that because of their relationship, Mr. Shearer and Ms. Veress possess an interest in the outcome of each other's lawsuits. Defendant also argues that permitting Mr. Shearer to attend the deposition while he is still employed by defendant would conflict with defendant's interest in maintaining good employee relations were Mr. Shearer to report the matters discussed at the deposition to co-workers.

Ms. Veress and Mr. Shearer have undoubtedly already discussed their respective versions of the underlying facts. In any event, courts have declined to order sequestration based on a

conclusory allegation or inchoate fear that witnesses who attend each other's depositions will tailor their testimony to conform. See In re Terra International, Inc., 134 F.3d 302 (5th Cir. 1998); Jones v. Circle K Stores, Inc., 185 F.R.D. 223, 224-25 (M.D.N.C. 1999). See also Crown Cork & Seal Co. v. Cott Corp., 2002 WL 20253 (E.D. Pa. Feb. 8, 2002); United Incentives, Inc. v. Sea Gull Lighting Products, Inc., 1991 WL 209018 (E.D. Pa. Oct. 7, 1991). To find good cause without more "would surely mandate the same result in all cases in which there was more than one fact witness on an issue and where the movant alleges that prejudice could result." Tuszkiewicz v. Allen Bradley Co., 170 F.R.D. 15, 17 (E.D. Wis. 1996).

The two opinions on which defendant principally relies involved cases where the matters at issue were uniquely within the knowledge of those to be sequestered. There has been no such showing in the instant case.

It may well be plaintiff and Mr. Shearer who are strategically disadvantaged in their respective cases if each must admit on cross-examination that they observed or discussed the testimony of the other before testifying themselves.

As to defendant's interest in maintaining good employee relations, Mr. Shearer is already in a position to relate to co-workers his version of the facts as well as that of Ms. Veress. Ms. Veress and Mr. Shearer do not appear to have any greater

interest in the outcome of the other's lawsuit than other parties who have not been barred from depositions in many other cases.

Defendant has not demonstrated good cause to bar Mr. Shearer from attending plaintiff's deposition. The court assumes that Mr. Shearer would be present only as an unobtrusive observer.

ACCORDINGLY, this day of May, 2002, upon consideration of defendant's Motion for a Protective Order (Doc. #13) and plaintiff's response thereto, **IT IS HEREBY ORDERED** that said Motion is **DENIED**.

BY THE COURT:

JAY C. WALDMAN, J.