

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

BRENDA BAILLARGEON :
 :
 v. : C.A. No. 07-271S
 :
 DRUG ENFORCEMENT :
 ADMINISTRATION :

MEMORANDUM AND ORDER

Pending before the Court for determination (28 U.S.C. § 636(b)(1)(A); LR Cv 72(a)) is a Motion to Quash filed by Plaintiff. (Document No. 84). Defendant DEA objects. (Document No. 87). A hearing was held on November 29, 2010. For the following reasons, Plaintiff’s Motion to Quash is GRANTED in part and otherwise DENIED.

Background

This case started out as a seven-count Complaint alleging that the DEA and its employees and agents violated the Constitution and other federal and state laws when the revocation of Plaintiff’s “security” clearance by the DEA allegedly resulted in the loss of her job as an Asset Forfeiture Specialist with Forfeiture Support Associates (“FSA”). FSA is a private Government contractor engaged by the DEA. Following two rulings by Judge Smith on Rule 12 dispositive motions filed by Defendants, Plaintiff’s case has been narrowed down to a single claim against the DEA. See Baillargeon v. DEA, 638 F. Supp. 2d 235 (D.R.I. 2009) and Baillargeon v. DEA, No. 07-271S, 2010 WL 1490839 (D.R.I. April 12, 2010). In particular, the sole remaining count is a claim for injunctive relief only as to the DEA for the alleged violation of Plaintiff’s right to procedural due

process in depriving her of the right to follow her chosen profession. See Baillargeon, 638 F. Supp. 2d at 244.

Discussion

Plaintiff's Motion is directed at four document subpoenas issued by Defendant. The first two, issued on September 21, 2010, were directed at two of Plaintiff's former employers East Coast Closing & Title Co., c/o Keith A. Heroux, Esq. and the Law Offices of Raymond Mansolillo, Esq. Plaintiff worked as a paralegal for each entity for a period after the termination of her employment with FSA. The second two, issued on September 22, 2010, were directed at two divisions (Temporary Disability Insurance and Unemployment Insurance) of the Rhode Island Department of Labor and Training ("RIDLT"). These subpoenas came on the heels of two rulings on discovery disputes issued by the Court on September 17, 2010 and September 20, 2010, respectively. (Document Nos. 78 and 80). Since discovery was scheduled at the time to close on September 30, 2010, Defendant's counsel made each subpoena returnable to her office at 9:00 a.m. on September 30, 2010 a little over one week after service.

Plaintiff's Motion to Quash was filed after the return time for the subpoenas at 5:20 p.m. on September 30, 2010.¹ Because the Motion to Quash was filed after the date and time specified for production of the documents requested, Defendant argues that the Motion is untimely. See, e.g., Flagstar Bank, FSB v. Freestar Bank, N.A., No. 09 C 1941, 2009 WL 2706965 at *3 (N.D. Ill. Aug. 25, 2009) (a motion to quash is "timely" under Fed. R. Civ. P. 45(e)(3) if filed at or before the date and time indicated for compliance with the subpoena). Although the time frame was somewhat

¹ In an email exchange between counsel (Document No. 87 5), Plaintiff's counsel made clear as early as September 22, 2010 that he intended to move to quash the subpoenas but has offered no explanation as to why the Motions were not filed until a week later and over eight hours after the time for compliance noted on the subpoenas.

abbreviated due to the impending discovery closure date, Plaintiff had over one week to move to quash and offers no explanation for the failure to move to quash the subpoenas prior to the return date and time. In fact, the failure to do so has rendered this dispute moot as to the RIDLT subpoenas since they were responded to prior to Plaintiff moving to quash. In addition, on September 30, 2010 prior to the filing of Plaintiff's Motion, Defendant received documents from East Coast Closing & Title responsive to the subpoena. Thus, Plaintiff's Motion is moot as to three of the four subpoenas.

As to the fourth subpoena served on the Law Offices of Raymond Mansolillo, Esq., Defendant argues that the personnel documents sought go to the issue of whether the revocation of Plaintiff's "security clearance" has precluded her from following her "chosen profession." Plaintiff alleged in her Amended Complaint that, as a result of Defendant's actions, she "was forced to leave her chosen profession in the asset forfeiture field and [was] employed [at the time] as a paralegal." (Document No. 13, ¶22). Defendant counters that Plaintiff has not been precluded from her "chosen profession" because the duties she subsequently performed as a paralegal were the same or at least substantially similar to those she performed while an Asset Forfeiture Specialist for FSA.

Since Plaintiff does not claim that Defendant's actions precluded her from working generally as a paralegal or that she has been unable to secure work as a paralegal due to Defendant's actions, the broad requests for hiring, performance, disciplinary and termination documents does not fall within the scope of relevant discovery under Fed. R. Civ. P. 26(b)(1). In addition, since Plaintiff has no back pay claim before the Court, the request for salary information is also not within the scope of relevant discovery. Thus, the only documents potentially relevant to Defendant's defense that Plaintiff's "chosen profession" includes working as a paralegal are those which would identify her job duties as a paralegal. Accordingly, the document subpoena served on the Law Offices of

Raymond Mansolillo, Esq. is quashed except for the request for any and all documents which detail the job duties, job requirements and areas of responsibility for Plaintiff while she was employed at such firm.²

Conclusion

Plaintiff's Motion to Quash (Document No. 84) is DENIED as untimely and moot as to the RIDLT subpoena; and the East Coast Closing & Title subpoena; and is GRANTED in part and otherwise DENIED as to the Law Offices of Raymond Mansolillo, Esq. subpoena as provided herein.

SO ORDERED

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
December 13, 2010

² Consistent with this ruling, any future deposition of either Mr. Heroux or Mr. Mansolillo shall be limited to questioning about Plaintiff's job duties, job requirements and areas of responsibility during the period of her employment.