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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PATRICK MCGINLEY,

Petitioner,

Case No.: 23-1960

Agency Case No.: 202338706

v.

BARRY UNIVERSITY LAW SCHOOL,

Respondent.

**RESPONDENT'S RESPONSE IN OPPOSITION TO PETITIONER'S
MOTION FOR PROTECTIVE ORDER TO QUASH THE NOTICE OF
DEPOSITION "UNILATERALLY" SCHEDULING PETITIONER'S
DEPOSITION FOR AUGUST 8, 2023, IN MIAMI-DADE COUNTY**

Respondent, Barry University Law School ("Respondent" or "Barry"), by and through its undersigned counsel and pursuant to Rule 28-106.204 of the Division of Administrative Hearings ("Division" or "DOAH") Rules of Uniform Procedure, hereby files its Response in Opposition to Petitioner, Patrick McGinley's ("Petitioner"), Motion for Protective Order to Quash the Notice of Deposition "Unilaterally" Scheduling Petitioner's Deposition for August 8, 2023, in Miami-Dade County and states as follows:

1. Petitioner's deposition was not scheduled unilaterally, and Respondent's intention, of course, is to schedule all depositions at mutually agreeable dates and times.
2. Indeed, per Respondent's letter dated June 14, 2023 [attached to Petitioner's Motion at Exhibit A], Respondent selected August 8, 2023, as the date on which it requested to take Petitioner's deposition while requesting that Petitioner (1) confirm that this date would work for Petitioner, or (2) contact counsel for Respondent to provide alternative dates if Petitioner was unavailable on the date selected for the deposition.
3. Accordingly, as referenced in Respondent's letter and the conferral emails

attached to Petitioner's Motion at Exhibit C, Respondent has already offered to move the date of Petitioner's deposition previously, and Respondent continues to offer to reschedule the deposition date.

4. Indeed, as indicated by the June 14 letter, Respondent actually provided nearly 2 months' notice of the deposition, but Petitioner filed the instant Motion, on a Friday afternoon while the undersigned was on vacation (despite having been aware of the deposition date for a full month by that point), apparently because he could not wait another few days to finalize a revised date for the deposition (it is undisputed that the undersigned offered in both the June 14 letter, and the July 14 emails, to move the date once the undersigned returned from vacation).

5. Further, the parties are currently considering alternative dates for Petitioner's deposition as referenced in the conferral emails attached to Petitioner's Motion at Exhibit C.

6. Next, Petitioner's Motion also fails to set forth sufficient grounds—let alone establish good cause—in support of a protective order prohibiting Respondent from deposing Petitioner in Miami, Florida.

7. As an initial matter, Petitioner argues in conclusory fashion that these are “Orange County proceedings” while ignoring the fact that the instant action is pending before the Florida DOAH, which is located in Leon County, Florida.

8. As such, the present forum is not located in Orange County, Florida, and Petitioner's citation to cases holding that a plaintiff can generally be deposed in the forum where the action is pending are inapposite.

9. Secondly, courts enjoy “great discretion in designating the location of taking a deposition.” *Otto Candies, LLC v. Citigroup, Inc.*, 963 F.3d 1331, 1344 (11th Cir. 2020).

10. “Also, ‘the party noticing the deposition usually has the right to choose the location’” *Rowland v. Bozarth*, No. 3:21cv690-TKW-HTC, 2022 U.S. Dist. LEXIS 32235, at *6-7 (N.D. Fla. Jan 26, 2022) (quoting *Buzzeo v. Bd. of Educ., Hempstead*, 178 F.R.D. 390, 392 (E.D.N.Y. 1998). *See also Reid v. Temple Univ. Hosp., Inc.*, 329 F.R.D. 531, 532 (E.D. Pa. 2019) (explaining that “the party taking the deposition usually selects the place where the deposition will be conducted.”); *Turner v. Prudential Ins. Co. of Am.*, 119 F.R.D. 381, 383 (M.D.N.C. 1988) (explaining that the party initiating the deposition “may unilaterally choose the place for deposing an opposing party”).

11. “Courts, therefore, give some weight to the location selected by the party conducting the deposition, especially if the location selected also is within the district and division in which the plaintiff initiated the action.” *Huddleston v. Bowling Green Inn of Pensacola*, 333 F.R.D. 581, 585 (N.D. Fla. 2019).

12. Further, “[a] plaintiff generally is required to bear any reasonable burden or inconvenience that the civil action presents.” *Huddleston*, 333 F.R.D. at 585 (internal citations omitted). “A plaintiff ‘has not only taken the volitional step of initiating the lawsuit or claim, he or she stands to gain a substantial monetary sum and/or other beneficial relief as a result of suing a defendant.’” *Id.* (internal citations omitted). “A plaintiff, therefore, cannot invoke the mere fact inconvenience or expense as a legitimate reason to refuse to appear and submit himself or herself to questioning by the defendant regarding the basis for the claim.” *Id.* (internal citations omitted).

13. Here, although Barry University, Inc.’s **law school** is located in Orlando, Florida, Barry University itself is actually principally located in Miami, Florida. This is an undisputable fact (which is also the reason why the undersigned counsel, out of Miami, has

been tasked with the defense of this claim because this is where Respondent is located), and Respondent has exercised its “usual” right to select the location for Petitioner’s deposition on this basis (as well as the fact that neither party is located in Leon County, Florida).

14. Respondent’s agreement to conduct the Final Hearing of this matter via Zoom videoconference, therefore, is inconsequential to Respondent’s ability to select the location for Petitioner’s deposition.

15. Moreover, given that Petitioner has commenced these proceedings against the law school of a Miami-based University, Petitioner should be required to bear any reasonable burden, inconvenience, or expense that these proceedings present instead of being allowed to push such burden, inconvenience, or expense to Respondent. *See Huddleston*, 333 F.R.D. at 585 (noting that defendants are not before the court by choice and recognizing that “‘courts have held that plaintiffs normally cannot complain if they are required to take discovery at great distances’ from their location”) (internal citations omitted).

16. Petitioner’s lack of ties to Miami-Dade County, therefore, are also inconsequential to Respondent’s usual right to select the location for Petitioner’s deposition.

17. Ultimately, “any litigant who seeks a protective order to preclude a deposition in a particular place, must establish *with evidence* an inability to attend a deposition at that place or the probability of suffering a substantial hardship beyond the ordinary inconvenience that any deposition necessarily entails.” *Huddleston*, 333 F.R.D. at 585-86 (emphasis in original).

18. Petitioner has provided no such evidence of an inability to attend his deposition in Miami, Florida or the probability of ***substantial hardship*** beyond his conclusory allegations about the ordinary burden, inconvenience, or expense that attending

his deposition in Miami would present.

19. To put the matter in more clear relief: taking the deposition will be inconvenient for either Petitioner (who will have to come to Miami but otherwise has to do nothing to prepare) or the undersigned counsel representing a Miami-based University (who would have to travel to Orlando and remain there for at least two days to ensure he is prepared with documents in Orlando ahead of time and ready to start the deposition on time, and potentially a third day if the deposition ends too late to go back to Miami the same day as the deposition). Respondent contends that, as between the two parties, Petitioner should be required to attend the deposition in Miami given that he is the one who chose to sue Barry University for not hiring him for an adjunct position when he admits he flatly refused to stop proselytizing to students (a right that does not exist in American jurisprudence).

20. Accordingly, Petitioner is unable to establish the requisite good cause required for a protective order and should be required to attend his deposition in Miami, Florida.

WHEREFORE, Respondent, Barry University Law School, respectfully requests that the Department of Administrative Hearings enter an order (1) denying Petitioner's Motion for Protective Order, (2) allowing the parties to schedule Petitioner's deposition on a mutually agreeable date and time, and (3) requiring Petitioner to appear in Miami, Florida for his deposition in this action.

[Remainder of page intentionally left blank.]

Dated: July 18, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 18th day of July 2023, the foregoing document is being served via electronic mail upon on all counsel of record or parties identified on the below Service List.

s/ Jason A. Anon
Jason A. Anon, Esq.

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