

UNITED STATES OF AMERICA
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
MIAMI DISTRICT OFFICE

In the matter of

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Carlton E. Hooker,

Complainant,

v.

Eric K. Shinseki, Secretary,
Department of Veterans Affairs,

Agency.
-----X

EEOC Case No.
510-2013-00394X

DVA Case No.
200I-0516-2013101717

William Rodriguez
Administrative Judge

November 21, 2013

Order of Dismissal

Due to discovery differences between the parties, on October 28, 2013, an Order was which granted in part and denied in part the Complainant’s motion to compel discovery. That Order also arranged for a Pre-Hearing Conference (“PHC”) on discovery matters concerning what witnesses could be deposed by the Complainant. On November 7, 2013, a PHC took place and a date for the depositions was selected. At that time, the Complainant did not reveal the location of the deposition; he only indicated it would be a public place. After an Order was issued on November 7, 2013, regarding the depositions to be taken the Complainant filed a Notice of Deposition on November 11, 2013 (1st Deposition Notice”).

In his 1st Deposition Notice, the Complainant identified the Uhuru House as the location of the depositions. On November 12, 2013 the Agency filed a Motion for a Protective Order on Deposition Location and Request for Sanctions (“1st Motion for Protective Order”). The Agency attached a prior motion for a protective order in another case and the resultant order issued by a U.S. District Court Magistrate Judge in which the issue of the Uhuru House as the location for depositions was addressed involving the same parties. The Judge in that case ordered that the deposition be taken at the court reporter’s office. After review of the Agency’s 1st Motion for

Protective Order, the undersigned Administrative Judge issued an Order on November 14, 2013 in which I noted that the only reason the Complainant chose the Uhuru House was to make the deponents feel uncomfortable. The Complainant was directed to take the depositions at the court reporter's office.

Instead of complying with the Order issued on November 14, 2013, and scheduling the deposition at the court reporter's office, on that same day the Complainant filed a response to that Order indicating he had selected the offices of the NAACP to conduct the depositions. Among other things, he stated in that response that:

“If the Administrative Judge refuses to accept the new location, it would show an extreme prejudicial bias toward minorities thus interfering with the Complainant and his right to conduct discovery at a location he is paying for.”

On November 18, 2013 an Order was issued noting that the Complainant provided no logical reason for not complying with the Order directing the Complainant to take the depositions at the court reporter's office. The Complainant was instructed that unless he provided an immediate valid reason for ignoring or attempting to undermine the instructions set out in the November 14, 2013 Order, the depositions must be held at the court reporter's office. That same day, the Complainant filed a response citing “cost effectiveness” as the reason for selecting the NAACP as the location for the depositions.

On November 19, 2013, the Agency filed a Second Motion for Protective Order on Deposition Location and Request for Sanctions (“2nd Motion for Protective Order”). The Agency's 2nd Motion for Protective Order pointed out that the court reporter the Complainant contracted to use had two offices; one in Clearwater, Florida which does not charge for use of their conference room; the other in St. Petersburg, Florida which charges an extra fee after the first two hours in the amounts of \$25.00 for half day; \$50.00 for a full day. On that same day the Complainant filed a response to the Agency's 2nd Motion for Protective Order. In that response the Complainant did not deny or otherwise challenge the facts as described by the Agency. Instead, the Complainant made the assertion that the Administrative Judge improperly entertained the Agency's motions for a protective order because the Agency failed to confer with the

Complainant in good faith so as to attempt to resolve the matter before filing any motion as set out in Paragraph I of the Acknowledgment and Order. An Order was issued on November 19, 2013 reaffirming the court reporter's office as the deposition location. It was noted in that Order that the Complainant had misrepresented facts in an attempt to manipulate the undersigned Administrative Judge so as to force the deponents into as much of an uncomfortable position as possible for the taking of their depositions. It was also noted that the Complainant's assertion that there was no attempt by the Agency to resolve the matter in good faith prior to making the motion lacked merit.¹ It was clear by then that the issue of the deposition location is a matter that has always been in contention and a point of disagreement. In fact, it goes as far back as September 24, 2012 when the District Court Judge issued her order in that other case.

On the morning of November 20, 2013 upon the Administrative Judges return to the office, he had a voice mail message from the Complainant in which the Complainant wanted to "clarify a procedural issue." However, what he wanted was an explanation as to why the Agency's motions for a protective order were accepted without a statement from the Agency that they had made a good faith effort to resolve the matter of the hearing location before filing the motions.

At approximately 8:45 A.M. the Complainant telephoned the undersigned Administrative Judge. The Complainant proceeded to state he had a procedural question. I told the Complainant that if it was the same question left as the voice mail message it was not procedural and he could not entertain the question at that time without the presence of the Agency's attorney and that he was preparing to conduct telephonic pre-hearing conferences on other cases beginning at 9:00 A.M. The Complainant continued to insist he wanted to have the discussion at that time. It was clear from his message and his continued attempt to engage the Administrative Judge that the subject matter was not merely a procedural issue. It is one that the Agency representative should be a part of given the obvious attempt of the Complainant to change the outcome of the Order issued the day prior. The Complainant was told that conversation will not happen at that moment. The

¹ As previously noted, as early as November 7, 2013 when the Pre-Hearing Conference was convened and the issue could have been resolved, the Complainant refused to identify the location he intended to use as the deposition location and instead stated it would be a public place.

Complainant became agitated and raised his voice insisting he had a right to an explanation, that he was being disrespected and continued disregarding the Administrative Judge's attempt to stop the conversation. The Complainant then said to the Administrative Judge "you don't know your ass, from your face, from a hole in the ground...I will tell you this to your face." The Administrative Judge told the Complainant he (the Administrative Judge) does not have to and would not tolerate the Complainant's verbal abuse. The Complainant continued to rant over the Administrative Judge's voice. The Administrative Judge told the Complainant he was hanging up the telephone and did so.

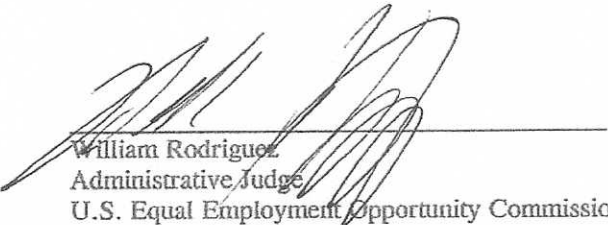
An Administrative Judge may impose sanctions up to and including dismissal of a complaint when a Complainant engages in contumacious conduct. 29 C.F.R. §1614.109(f)(3)(v); *Hooker v. Department of Veterans Affairs*, EEOC Appeal No. 0120122165 (August 27, 2013); *Jackson v. Department of Homeland Security*, EEOC Appeal No. 0120093477 (December 4, 2009); *Burns v. United States Postal Service*, EEOC Appeal No. 01A52445 (October 19, 2005). Contumacious conduct is characterized as behavior or disruptive conduct that may include unprofessional or disrespectful behavior; degrading, insulting or threatening verbal remarks or conduct; or the use of profanity. *Id.* A finding of contumacious conduct can be based on a series of disruptive incidents, a pattern of acts, or a single sufficiently obstructive episode. *Id.*

It is clear from his conduct that the Complainant has little if any respect for the EEO process, the Administrative Judge or anyone that does not agree with his position.² By telling the Administrative Judge that he would say such things as he did to the Administrative Judge's face he has displayed not only disrespect, but contumacious, antagonistic and very aggressive behavior. The Complainant cannot proceed in or abuse the EEO process so as to try to obtain rulings in his favor by attempting to bully and intimidate the Administrative Judge or anyone

² Given the Complainant's conduct on the morning of November 20, 2013, which the undersign believes is sufficiently egregious to impose the sanction of dismissal, the Administrative Judge will not address in detail the Complainant's repeated attempts to engage in discovery on matters not related to the present complaint. However, review of the record of proceedings will establish the Complainant continues to display obstinate behavior coupled with a willful disregard to follow the Orders/Instructions issued by the Administrative Judge as he has done in the past. *Hooker v. Department of Veterans Affairs*, EEOC Appeal No. 0120122165 (August 27, 2013).

else involved in the process. If the Complainant continues to conduct himself in that manner he should be precluded from participating in the EEO process. However, as it pertains to this complaint, the Complainant has waived his right to a hearing. The Agency should issue a Final Decision based on the evidence of record as set out in the regulations. 29 C.F.R. §1614.110(b). The Complainant's request for a hearing is DISMISSED.

It is SO ORDERED.



William Rodriguez
Administrative Judge
U.S. Equal Employment Opportunity Commission
Miami District Office
100 SE 2nd Street, Suite 1500
Miami, Florida 33131
305.808.1776
wrodriguez-efilebox@eoc.gov

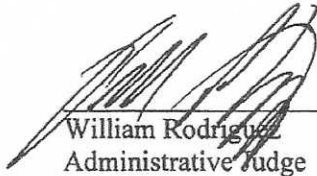
Certificate of Service

For timeliness purposes, it shall be presumed that the parties received the attached Order within five (5) days after being sent when sent *via* First Class Mail. Unless otherwise noted below, the foregoing was sent *via* first class mail on November 21, 2013, to:

Office of Employment Discrimination
Complaint Adjudication (OEDCA)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Mr. Carlton E. Hooker
1979 58th Circle South
St. Petersburg, FL 33712

Karen L. Mulcahy, Esq.
Office of Regional Counsel (516-02)
VA Medical Center
PO Box 5005
Bay Pines, FL 33744



William Rodriguez
Administrative Judge