

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 14-cv-00245-MSK-MJW

REVEREND MATT HALE,

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS,

Defendant.

**DEFENDANT’S MOTION FOR AN EXTENSION
OF THE DISPOSITIVE MOTION DEADLINE**

The Federal Bureau of Prisons (“BOP”) respectfully asks this Court to extend the current dispositive motion deadline of June 30, 2017, *see* Doc. 155 at 10, by 31 days, **to and including August 1, 2017**.¹ The BOP recognizes that this is a significant amount of additional time, but there is good cause for the Court to grant the motion in light of the unique circumstances present here. Because Mr. Hale is a federal prisoner who is representing himself, the BOP did not consult with him before filing this motion. *See* D.C.COLO.LCivR 7.1(b)(1) (setting forth an exception to duty to confer in “a motion filed in a case involving an unrepresented prisoner”).

A. Mr. Hale’s incarceration in a Special Housing Unit in another state delayed the taking of depositions.

There is a lengthy record in this case detailing Mr. Hale’s housing situation over the past thirteen months. In late May 2016, Mr. Hale was transferred from the ADX to the Federal

¹ A thirty-day extension would make the filing deadline Sunday, July 31, 2017.

Correctional Institution in Terre Haute, Indiana (“FCI Terre Haute”). On August 25, 2016, Mr. Hale was placed in the Special Housing Unit (“SHU”) at FCI Terre Haute, where he was housed for seven months. Mr. Hale was redesignated to the ADX, where he arrived on April 7, 2017. *See, e.g.*, Declaration of Lieutenant Amy Kelley, Doc. 172-1 ¶¶ 13, 20-22.

During the seven months when Mr. Hale was in the SHU at FCI Terre Haute, undersigned counsel kept in contact with him. Mr. Hale and counsel spoke by telephone multiple times. At one point, Mr. Hale scheduled depositions of two BOP witnesses, which undersigned counsel help facilitate by locating a court reporter for Mr. Hale in Indiana and by working with FCI Terre Haute officials to arrange for video conferencing. Mr. Hale ultimately informed counsel that he did not wish to proceed with depositions while he was in the SHU. In his view, it would have been very difficult for him to take depositions, and to be deposed himself, because of the physical restrictions in that particular housing unit.

The BOP considered Mr. Hale’s view of the matter and agreed to work with him to enable him to conduct depositions after he left the SHU. As noted in past filings, that decision was informed in part by the fact that the BOP anticipated that the resolution of Mr. Hale’s long-term housing assignment would be sooner than it was. That did not turn out to be the case. The ADX referral process, which was conducted completely independently of this litigation, was not completed until late February 2017, *see* Kelley Declaration at ¶ 21, and it took additional time for the BOP to physically transport Mr. Hale to the ADX. Mr. Hale did not arrive at the ADX until April 7, 2017, and it took several more weeks for Mr. Hale’s legal materials to arrive at the ADX.

B. Mr. Hale has now taken four depositions, which were completed on June 7, 2017.

Immediately after Mr. Hale's return to the ADX, the BOP and undersigned counsel began working to help him schedule and take depositions. Undersigned counsel located two court reporting services for Mr. Hale to consider, one of which he selected.² Mr. Hale then had to arrange for prepayment of the court reporter's fees. That, in turn, required that telephone calls be arranged between Mr. Hale and a member of his family who would make the required prepayment. In the meantime, undersigned counsel worked with the witnesses, only one of whom is located in Colorado, to schedule the depositions. Counsel was also required to obtain approval for travel to the depositions of the out-of-state witnesses and to make the necessary travel arrangements.

The BOP and undersigned counsel worked quickly, but completing these tasks took several weeks. Mr. Hale deposed the Chief of the BOP's Sacramento Intelligence Unit on May 15, 2017, and a BOP Intelligence Operations Officer on May 16, 2017. Both of these witnesses were located in California. The following week, undersigned counsel deposed Mr. Hale. On June 2, 2017, Mr. Hale deposed a witness located at ADX Florence. By mutual agreement of the parties, Mr. Hale deposed the BOP's retained expert on June 7, 2017, a few days after the formal discovery deadline. That schedule alteration was necessary because of unavoidable, long-planned obligations in the expert's schedule, as well as the heavy travel schedule of undersigned counsel beginning in mid-May.

² Counsel made clear to Mr. Hale that he was free to choose any court reporter he preferred.

In the end, Mr. Hale was able to take all depositions for which he was able to secure the necessary funds. The BOP and undersigned counsel worked diligently to ensure that happened. The fact that discovery in this matter took unusually long was the result of circumstances unrelated to this litigation and the BOP's good-faith efforts to accommodate concerns raised by Mr. Hale.

C. The BOP needs additional time to review the recent discovery and for its witnesses to prepare their declarations.

As of the date of this filing, undersigned counsel has received three of the five deposition transcripts. It is anticipated that the other two transcripts will not be completed until next week.

The BOP expects to submit at least eight lengthy and detailed declarations in support of its motion for summary judgment. The declarants include current BOP officials, including high-level officials in the BOP's Sacramento Intelligence Unit and its Central Office in Washington, D.C. The declarants also include two former ADX Wardens, both of whom now live outside Colorado, who made the decisions to restrict Mr. Hale's mail privileges in the past. It is necessary for the declarants—and for undersigned counsel, too—to thoroughly review the new information revealed in the recent discovery that may be pertinent to the particular witnesses' sworn testimony. To take one example, it is essential for the witnesses to be aware of Mr. Hale's testimony concerning (1) information about their individual actions and (2) information that may bear on the witness's assessment of the Creativity Movement, which is a BOP-designated Security Threat Group.

The process of reviewing the recent discovery and preparing declarations has commenced, but the work required to complete those declarations is significant and cannot be completed by June 30, 2017. Thorough declarations in final form are necessary in order for

undersigned counsel to take the next step of writing a brief that clearly and accurately articulates the relevant facts and analyzes them in accordance with the applicable law. BOP officials and counsel are working and will continue to work hard, but the very recent conclusion of an intense period of key discovery does not allow them to present that information in a motion for summary judgment by the current deadline in a form that would make the Court's consideration of the issues as efficient as possible.

D. The requested extension will not compromise any deadline or the progress of this case.

Before filing this motion for extension, the BOP took seriously its obligation to carefully consider the need for an extension of time, and the impact the requested extension may have on the litigation. For the reasons discussed above, the BOP is unable to submit a carefully written, thorough motion with the necessary supporting declarations by the current deadline. Moreover, the extension requested will not significantly affect the scheduling of the case at this point. No trial is set at this time. The BOP respectfully submits that a summary-judgment motion may serve to narrow and focus the remaining issues before the Court, even if the motion is denied or is granted only in part. Thus, the motion for summary judgment will potentially reduce the amount of court and security resources that will be required if a trial were held. *See* Fed. R. Civ. P. 1 (The Federal Rules of Civil Procedure “should be construed, administered, and employed by the court and the parties to secure the just speedy, and inexpensive determination of every action and proceeding.”).

Pursuant to D.C.COLO.LCivR 6.1(b), the BOP states that it previously requested one 60-day extension of the discovery and dispositive deadlines, which the Court granted. Doc. 88. It also requested one previous 90-day extension of the same deadlines, which the Court granted.

Doc. 99. The parties jointly requested one 90-day extension of those deadlines, which the Court granted. Doc. 112. The parties jointly requested one 75-day extension of the deadlines, which the Court granted in part. Doc. 155 at 10. Pursuant to D.C.COLO.LCivR 6.1(c), the BOP represents that a copy of this motion will be served on Mr. Hale and an agency representative.

D. Conclusion

For the reasons set forth in this motion, the Federal Bureau of Prisons respectfully requests that the Court extend the deadline for filing dispositive motions to **August 1, 2017**. A proposed order is attached.

Respectfully submitted on June 16, 2017.

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
CERTIFICATE OF SERVICE (CM/ECF)**

I hereby certify that on June 16, 2017, I served the foregoing document on the following non-CM/ECF participant by United States mail:

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s/ Susan Prose
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