UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

DALILA KAMAL-GRIFFIN, Complainant,	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	CASE NO. 92B00067
CAHILL GORDON & REINDEL, Respondent.	)	

ORDER

I. *Introduction and Procedural History*

Currently pending in this case are three motions: (1) a motion filed by Dalila Kamal-Griffin, (hereinafter "Complainant") for additional time to complete discovery and to file a supplemental brief in opposition to the motion for summary decision, filed by Cahill, Gordon & Reindel (hereinafter "Cahill Gordon" or "Respondent"); (2) Complainant's motion to compel Respondent to comply with specific discovery requests; and (3) Complainant's motion for additional time for discovery, to submit a supplemental brief and an affidavit in support of Complainant's response to Respondent's motion for summary decision. In order to provide a context for these motions, I will set forth the procedural history of the case.

On March 25, 1992, Complainant filed a Complaint Regarding Unfair Immigration-Related Employment Practice with the Office of the Chief Administrative Hearing Officer, alleging that on June 21, 1991, Respondent, a law firm located in New York City, New York, knowingly and intentionally refused to hire Complainant for an attorney position because of her citizenship status.[1]

[1] Complainant, born in Morocco, is a French citizen and a permanent resident alien authorized for employment in the United States. She received her law degree from the University of Paris-Sorbonne, France, a Diploma of Chinese Law Studies from the Uni-versity of Beijing, People's Republic of China and has an LL.M. in Comparative Law from the University of San Diego. At the time Complainant applied for a job with Respondent, she had passed the New York Bar Exam and was awaiting admission. It

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In her complaint, Complainant seeks that I order Respondent to cease and desist from citizenship status discrimination and that Respondent be required to hire Complainant for an attorney position with back pay from March 25, 1989.[2]

Subsequent to the filing of the complaint, an answer was filed and shortly thereafter Respondent filed a motion for summary decision. In view of the fact that the motion for summary decision was filed very early in the case, I sua sponte issued an order on July 23, 1992, which provided Complainant with a reasonable time (until August 31, 1992) to complete discovery so that she could fairly and adequately respond to Respondent's motion for summary decision.[3]

On August 27, 1992, Complainant filed a motion for additional time to complete discovery and to file a supplemental brief in opposition to Respondent's motion for summary decision. On September 4, 1992, Complainant filed a motion to compel discovery.[4]

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[1](...continued)
is unclear from the pleadings, however, whether the date of Complainant's letter of application was March 25th, March 28th or May 31st of 1991.

[2] It is unclear how Complainant arrived at this date, since it is approximately two years before she applied for a position with Respondent.

[3] I gave Complainant a relatively brief period of time to complete discovery, considering her complaint alleged discriminatory refusal to hire. The pleadings and documents filed in the case, however, indicated that the parties were close to resolving their discovery disputes and that there would be no need for judicial intervention. See Respondent's cover letter to supplemental responses to Complainant's first set of interrogatories, filed August 18, 1992; Stipulation and Protective Order For the Exchange of Confidential Information, Filed August 21, 1992.

[4] Complainant and Charles A. Gilman, Esq., counsel for Respondent, attempted to nego-tiate limitations on Complainant's discovery requests, via telephonic conferences on August 7th and August 12th of 1992. Each, however, has since accused the other of fail-ing to comply with the alleged agreement. Mr. Gilman has accused Complainant of de-manding discovery beyond that to which she has agreed. Complainant has accused Mr. Gilman of submitting false statements to this office and deliberately using delay tactics to prevent Complainant from submitting a brief before August 31, 1992.

Given the adversarial nature of legal disputes, it may be difficult for some to dis-tinguish between advocacy and misrepresentation. Allegations that counsel knowingly submitted false statements to this office, however, should not be made unless there is strong evidence in support thereof, as such allegations are not viewed lightly. See ABA Model Rules of Professional Conduct 3.3(a)(1) and 4.1(a) and Disciplinary Rule 7-102(A)(5). I find that there has been no intentional wrongdoing by either of the parties or Respondent's counsel; rather, misunderstandings have occurred regarding the

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On September 3, 1992, Respondent filed its opposition to Complainant's motion for additional time for discovery and on September 19, 1992, Respondent filed its opposition to Complainant's motion to compel.

On September 14, 1992, Complainant filed a Reply to Respondent's Opposition to Complainant's Motion to Compel Discovery. On September 17, 1992, Respondent filed a letter commenting on Complainant's Reply.

On September 24, Complainant filed a motion for additional time for discovery, to submit a supplemental brief and an affidavit in support of her response to Respondent's motion for summary decision.

II. *Legal Analysis*

A. Regulatory Background and Guiding Federal Case Law

This agency's regulations regarding discovery provide that an admin-istrative law judge ("ALJ") may limit the frequency or extent of dis-covery. 28 C.F.R. § 68.18(a), as amended by the Interim Rule of October 3, 1991, 56 Fed. Reg. 50049 (hereinafter "28 C.F.R. § 68"). In addition, "[u]nless otherwise limited by order of the [ALJ][,] . . . the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding . . ." 28 C.F.R. § 68.18(b). Furthermore, the ALJ, for good cause shown may issue a protective order "to protect a party or person from annoyance, harassment, embarrassment, oppression, or undue burden or expense." 28 C.F.R. § 68.18(c).

These provisions regarding discovery in this administrative proceeding are similar to those applicable to civil discovery in federal district court proceedings. See Rule 26(a), (b) and (c) of the Federal Rules of Civil Procedure ("FRCP"). Therefore, I will examine federal case law interpreting the purpose and scope of discovery as a guide in deciding Complainant's motion to compel.

The federal courts have held that the rules of discovery and the procedures for implementing them are to be broadly and liberally applied. Hickman v. Taylor, 329 U.S. 495, 507 (1947); Dollar v. Long

[4](...continued)
numerous interrogatories and requests for production discussed in the two telephonic conferences.

Mfg., N.C., Inc., 561 F.2d 613 (5th Cir. 1977), cert. denied, 435 U.S. 996 (1978); see Robertson v. National Basketball Ass'n, 622 F.2d 34, 35-36 (2nd Cir. 1980) (Under FRCP 26(c), the trial court has broad discretion over discovery matters.) "No longer can the time-honored cry of 'fishing expedition' serve to preclude a party from inquiring into the facts underlying his opponent's case." Hickman v. Taylor, 329 U.S. at 507.

Although the scope of discovery is broad, it is not unlimited. See Hecht v. Pro-Football, Inc., 46 F.R.D. 605 (D.D.C. 1969). In any discovery dispute, the court must exercise its discretion as to whether the motion to compel should be granted. Burns v. Thiokol Chemical Corp., 483 F.2d 300, 304-05 (5th Cir. 1973). "Discovery should be tailored to the issues involved in the particular case." Hardrick v. Legal Services Corp., 96 F.R.D. 617, 618 (D.D.C. 1983). Relevancy therefore means whether the material sought will have a substantial effect on the case's outcome. Greene v. Raymond, 41 F.R.D. 11, 14 (D.Col. 1966).

B. Interrogatories and Document Requests at Issue

A careful review of Complainant's discovery requests shows that they are generally over broad geographically and with respect to the types of discrimination she seeks to prove. Some are over broad with respect to the time period covered. I find, however, that aspects of Complainant's requested discovery are relevant to her case and Respondent must therefore comply with these requests in order to provide Complainant with a fair and reasonable opportunity to determine the substance of her allegation of citizenship status discrimination against Respondent.[5] As to some discovery requests, I will compel Respondent to comply only conditionally. As to those discovery requests which are clearly over broad and irrelevant to the allegation in the complaint, the motion to compel will be denied.

[5] The burdens of proof applicable to an allegation of citizenship status-based refusal to hire in violation of IRCA have been clearly stated by the ALJ in Salazar-Castro v. Cincinnati Public Schools, 3 OCAHO 406 (2/16/92). That decision, based on Title VII case law, outlines the allocation of the parties' burdens and the order of proof which must be followed in order for a complainant to establish a prima facie case and prove that the employer's reasons for not hiring the complainant were pretextual. Id. The burden of persuasion remains with Complainant at all times. Id. Furthermore, the complainant has an additional burden in proving a case of citizenship status discrimination because IRCA permits an employer to prefer to hire a U.S. citizen over an alien if the two applicants are "equally qualified." 8 U.S.C. § 1324b(a)(2)(A).

It is important, for Complainant to have reasonable discovery to determine the merits of her allegation. In light of the minimal evidence in the record supporting Complainant's theory of citizenship discrimination, however, I will not permit Complainant at this stage of the proceeding to discover unlimited details about all aspects of Respondent's hiring, firing, and promotional policies. Complainant must first establish a stronger basis for her allegation that Respondent refused to hire her based on her citizenship status discrimination.

Respondent makes several objections to all of Complainant's inter-rogatories which it incorporates into its response to each of the inter-rogatories discussed below. First, Respondent contends that the inter-rogatories are premature, especially "given the overbreadth of the requests." Second, Respondent objects to them "insofar as they seek privileged information including, without limitation, attorney-client communications intended to be confidential and information which constituted attorneys' work product." Third, Respondent objects to the interrogatories "insofar as they are vague, over broad, oppressive, unduly burdensome and irrelevant." Fourth, Respondent contends that the interrogatories are offensive and harassing. Fifth, Respondent objects to them insofar as they seek information about Respondent's Paris, France office as "[a]ll hiring and employment decisions for the Paris office are made by the Paris office, and are not related to hiring and employment decisions of the New York office." Finally, Respondent objects to the interrogatories as irrelevant, over broad and unduly burdensome insofar as they seek information regarding Cahill Gordon's non-legal personnel.

I will now address each of the interrogatories included in Complainant's motion to compel.

1. Interrogatory 3

Complainant requests the Respondent "[s]tate [the] total number of employees (in the New York and Paris, France offices) including associates and members of the firm." Finally, it requests that "[i]f the employee, or member of the firm, or associate identified is white," Respondent should "state whether the employee is identifiably [sic] . . . White European . . . Arab/North African . . . [or] of Jewish descent."

Respondent in response to this interrogatory, states that "[a]s of June 15, 1992, Cahill Gordon [was] made up of 207 lawyers (59 partners, 4 senior counsel, 6 counsel and 138 associate attorneys). Respondent further states that "[e]xcept as required by law, Cahill Gordon keeps no records that classify its employees according to race,

sex, age or citizenship . . ." Finally, Respondent states that it does not have information as to whether its employees are of "White European descent," of "Arab/ North African descent", or of Jewish descent."

Respondent has already provided Complainant with its National Association of Law Placement ("NALP") forms for 1989-90, 1990-91 and 1991-92, which classify Cahill Gordon's attorneys by sex and race. If such documentation indicates that there is a policy of hiring selected groups of persons, further discovery may be in order. Complainant, however, has made no such argument.

Respondent is directed to respond to Interrogatory 3, but only on a limited basis. Respondent shall state the total number of attorneys in the New York office only and shall list their position (e.g., partner, associate) and citizenship status.[6] The request for information as to race, sex, and age of the attorneys is denied.

2. Interrogatory 8

Complainant requests that Respondent "state [the] names and ad-dresses of all the attorneys hired laterally, in the New York and Paris, France, offices since January 1, 1989." The interrogatory further re-quests that Respondent classify these lateral hires by sex, race, and ci-tizenship. Finally, it requests that "if the newly fired attorney is white," that Respondent should further state whether the employee is identifiably of White European, Arab/North African descent or Jewish descent.

Respondent's response to Interrogatory 8 presumably lists all of Cahill Gordon's lateral hires of attorneys for the years 1989, 1990, 1991, 1992. The response states that "[e]xcept as required by law, Cahll Gordon keeps no records that classify its employees according to race, sex, age or citizenship, nor does it have information as to whether its employees are of 'white European descent,' of 'Arab/North African descent' or 'Jewish.'"

[6] It is unclear whether Respondent's statement that it has "three attorneys employed by the firm who are not American citizens (one is Swiss; two are French)," Cover Letter to Respondent's Supplemental Response to Complainant's First Set of Interrogatories, filed August 21, 1992, relates to the New York office only. Respondent shall clarify that statement in response to this interrogatory.

Respondent is directed to respond to this interrogatory by providing the citizenship status of the laterally hired attorneys listed in Respondent's response. The request for information as to their sex, race and age is denied.

3. Interrogatory 16

Complainant requests that Respondent "state [the] names and ad-dresses of all the associate attorneys granted a partnership in Respondent since January 1, 1980." Respondent objects to this interrogatory "insofar as it requests information since 1980." Respondent's response lists the names of those associates who have been elected to partnership in Cahill Gordon since January 1, 1990.

I find that the time period requested is overly broad and that the time period from January 1, 1990 to the present is reasonable and relevant to Complainant's case. I therefore deny the motion to compel insofar as it requests for the names of associates elected to partnership in Cahill Gordon from 1980 to 1990.

4. Interrogatory 19 and Document Requests 5 and 6

Complainant asks Respondent to "[s]tate the names and addresses of all the law graduates and attorney applicants interviewed by Respondent since January 1, 1990, by race, color, sex and citizenship status; state the source of referral and place of interview for each law graduate and attorney applicant."

Respondent objects to this interrogatory on the grounds that "it is over broad, oppressive, unduly burdensome and irrelevant." Respondent responds, however, by stating that:

> In the recruiting season Cahill Gordon interviewed over 1000 students on campus, of which 200 participated in a second round on interviews at Cahill Gordon's offices in New York. In the 1991 recruiting season, Cahill Gordon interviewed over 1,000 students on campus, of which over 200 participated in a second round of interviews at Cahill Gordon's offices in New York. In addition, in the 1991 calendar year, Cahill Gordon interviewed dozens of applicants who had applied directly (write-ins).

Complainant argues that the answer to this interrogatory would have been satisfied by Respondent's production of Document Requests 5 and 6 of Complainant's First Request for the Production of Documents.

Document Request 5 asks Respondent to "[produce all documents, such as interview notes, which comprise, contain, reflect, mention, refer or relate in any way to the decision of Respondent to hire or not hire each and every attorney and law graduate applicant interviewed by Respondent since January 1, 1990. Respondent's response to this request indicates that "[s]ince January 1, 1990 Respondent has interviewed more that 2,000 applicants on campus" and that Respondent objects to the request on the grounds that it is "unduly burdensome, oppressive, harassing, invasive of confidential relationships and not relevant to any legitimate issue in this proceeding."

Document Request 6 asks Respondent to produce the resumes, cover letters and employment applications of each and every attorney or law graduate applicant interviewed by Respondent since January 1, 1990. Respondent's response to this request is an objection "on the grounds that it is duplicative of Request No. 5."

Complainant admits in her motion to compel that on August 12, 1992, she had agreed (apparently with Mr. Gilman pursuant to their telephonic conference) to narrow the scope of Interrogatory 19 and Document Requests 5 and 6 to

> the production of the resumes, cover letters and employment applications of every lateral applicant interviewed since January 1, 1991; and to the production of the same documents from law graduates and attorneys invited for a second round of interviews.

Motion to Compel, filed September 4, 1992 at 4. Complainant argues, however, that Respondent failed to honor the agreement and has produced instead hundreds of anonymous copies of resumes.[7] Complainant also apparently wants me to compel Respondent to respond to Interrogatory 19 which was included in her original motion to compel.[8]

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[7] Although Complainant failed to obtain my permission to file a reply to Respondent's response to her motion for additional discovery in violation of 28 C.F.R. § 68.11(b), she filed a reply on September 14, 1992 in which she requested that I compel Respondent to respond to Interrogatories 3, 8, 9, 16 and 23 and to produce Document Requests 5 and 6.

[8] Interrogatory 23 and Document Requests 5 and 6 were also included in Complainant's original motion to compel.

An ALJ's duty to rule on a pending motion is difficult to carry out when unexpected and improper pleadings are filed which alter a party's original position. In view of Complainant's pro se status, however, I will permit and consider her latest pleadings

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Complainant attached to her original motion to compel three samples of the resumes produced by Respondent in response to her document requests. She points out that Respondent redacted the names of the applicants and she argues that the documents do not show when and where interviews occurred, who was hired, what criteria of selection were applied to the applicants interviewed and other relevant information that would enable Complainant to assess whether she has a prima facie case against Respondent.

Complainant requests that I compel Respondent (1) "to reveal the names and addresses of all the attorneys and law graduates (not law students) who have been interviewed by Respondent, in a first or second round of interviews, in Respondent's New York offices or elsewhere"; (2) "to produce all the documents requested without erasing or concealing all applicants names"; (3) "to put in a separate file the resumes, applications and interview notes of all the non-citizens and foreign graduates that were interviewed and/or hired since January 1, 1990"; and (4) "to include as law graduates, the holders of foreign law degrees who are completing an LL.M. degree in a United States School of Law."

Complainant's understanding of the August 12th agreement appears to differ from that of Mr. Gilman, counsel for Respondent. Mr. Gilman's affidavit in opposition to Complainant's motion for additional time for discovery, states that on August 12, 1992, he conferred with Complainant telephonically in attempt to resolve their discovery disputes. Mr. Gilman states that during this conversation, Complainant limited Interrogatories 19 and 20 to those applicants interviewed on campus during the 1991 hiring season who were invited for a second round of interviews at Respondent's offices and those applicants who applied directly (write-ins) and who were invited to an interview at Respondent's offices.

Mr. Gilman further states in an affidavit that once Complainant limited the scope on Interrogatories 19 and 20, he "agreed to provide her copies of the several hundred resumes of 1991 applicants interviewed on campus and invited for a second round of interviews and write-ins invited for an interview." Affidavit of Charles A. Gilman in

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[8](...continued)
(reply, affidavit and motion to compel) in ruling on her motion to compel. In the future, Complainant shall follow this agency's Rules of Practice and Procedure for Administrative Hearings Before Administrative Law Judges in Cases Involving Allegations of Unlawful Employment of Aliens and Unfair Immigration-Related Employment Practices, found at 28 C.F.R., Part 68.

Opposition to Complainant's Motion for Additional Time for Discovery, filed September 10, 1992 at 7.

Mr. Gilman further states in the affidavit that during the August 12th telephonic conference, he told Complainant that this is solely a citizenship status case and that her requests are largely over broad and irrelevant, but if it would put an end all discovery disputes, Respondent would:

> (a) provide Complainant with National Association of Law Placement questionnaires for the years 1989-90, 1990-91 and 1991-92 which contain information as to race and sex of all Cahill's attorneys;
>
> (b) provide Complainant with information as to the number of non-U.S. citizen attorneys hired by Cahill since 1989 and the number currently employed; and
>
> (c) provide Complainant with the names of all Cahill partners who have been members of the Firm's Hiring Committee since January 1, 1991.

Id. at 8. According to Mr. Gilman, it was agreed that Respondent would promptly supplement its prior discovery responses and that would resolve all discovery disputes.

Mr. Gilman further states in his affidavit that on August 18, 1992, Respondent served Complainant with supplemental responses and objections to her first set of interrogatories and produced the documents identified in the supplemental response.[9]

In ruling on Complainant's motion to compel, I must consider the constitutional and privacy rights of individuals who are not parties to this action. The concept of privacy is a valuable and flexible right "whose boundaries are delineated by the type of information sought and by the persons requesting it." Federal Labor Relations Authority v. United States Department of Veterans Affairs, 958 F.2d 503, 510 (2nd Cir. 1992). Federal courts have specifically held that individuals have a privacy interest in not having their names and addresses disclosed. See Breed v. U.S. Dist. Court for Northern Dist. of California, 542 F.2d 1114, 1116 (9th Cir. 1976); Heights Community Congress v. Veterans Administration, 732 F.2d 526, 529-30 (6th Cir. 1984), cert. denied, 469 U.S. 1034 (1984).

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[9] Again, it is important to note Mr. Gilman's statement that Cahill Gordon currently employs "three attorneys" who are not American citizens (one is Swiss; two are French)" and also his statement that "Indeed, several attorneys hired laterally or out of law school since 1989 are non-U.S. citizens." Id. at Exhibit 8.

In Cook v. Yellow Freight Systems, Inc., 132 F.R.D. 548 (E.D. Cal. 1990), former employees bringing a sexual harassment suit against their employer sought to compel answers to interrogatories in which plaintiffs were requesting that the defendant provide the last known
addresses and phone numbers of female employees who worked with an employee whom they accused of sexual harassment. Plaintiffs sought this information to prove that the accused employee had a history of sexually harassing women and that the defendant knew or should have known of his prior conduct.

The court stated that in ruling on discovery motions directed at private information, it is appropriate to balance the individual's right of privacy against the public need for discovery in litigation. Cook, 132 F.R.D. at 551. "[T]he initiation of a law suit does not, by itself, grant plaintiffs the right to rummage unnecessarily and unchecked through the private affairs of anyone they choose. A balance must be struck." Id.

The court weighed the defendant's concern with protecting the privacy interests associated with the names and addresses of its employees against the plaintiffs' interest in discovering such information for the purpose of presenting their case. The court, finding highly relevant to plaintiff's case the testimony of women who had worked for the accused employee in the past, allowed plaintiffs to discover the information they sought. Id. at 552. The scope of disclosure, however, was subject to methods and conditions prescribed by the court in an effort to preserve the privacy rights of those employees.

Following the Cook court's analysis, I direct the following:

1. Within 10 days of Complainant's receipt of this order, she is to file with this office a letter requesting a waiver of privacy rights and consent to be contacted for this lawsuit and a consent to have certain employment information disclosed. Such letter, subject to my approval, is to be sent to (a) law students interviewed by Respondent on campus for an attorney position at some point during 1990 or 1991 who were invited to a second round interview at Respondent's New York offices and were not offered a position; and (b) write-ins who applied for an attorney position with Respondent at some point from 1990 to 1991 who interviewed at Respondent's New York offices and were not offered a position.

2. After I notify the parties that I have approved of the letter, Respondent, within 10 days of receipt of such notification, is to send to Complainant two lists of the names and addresses of the persons

described above in 1(a) and (b), one list of those persons Respondent knows were not U.S. citizens at the time they applied for a position with Respondent and a second list of those persons whose citizenship Respondent has no knowledge of, for the sole purpose of enabling Complainant to mail the approved form letter.

3. Within 60 days of Complainant's receipt of the lists described above in paragraph 2, she shall submit to Respondent evidence of any third party's waiver of his or her privacy rights over the disclosure by Respondent of any documents, memoranda or information relating to Respondent's decision not to hire the third party.

4. Further discovery of those persons described above in paragraph 3 is subject to their individual consent and is to be used solely for the purpose of this lawsuit.

5. Within 10 days of Respondent's receipt of a third party's waiver of his or her privacy rights as to the disclosure of any documents, memoranda or information in Respondent's possession which relates to Respondent's decision to not hire the third party for an attorney position, Respondent shall submit to Complainant the third party's resume and cover letter, interview notes taken by Respondent which comprise, contain, reflect, mention, refer or relate in any way to Respondent's reasons why it failed to hire the third party, and the rejection letter Respondent sent the third party.

6. Respondent shall provide Complainant with the resumes of the U.S. citizens who applied for attorney positions with Respondent at some point during 1990 or 1991, and were subsequently offered a position with Respondent.

Complainant's motion to compel is denied with regard to Complainant's request that Respondent disclose the names and addresses of all law graduates and attorney applicants interviewed by Respondent since January 1, 1990 by race, color, sex, source of referral and place of interview.

5. Interrogatory 23

Complainant requests that Respondent "[i]dentify all the attorneys and law graduates who have left Respondent since January 1, 1990; please do so by sex, race, color, age and citizenship status. Also state the reason of [sic] their departure." Respondent objects to this interrogatory on the grounds that it is "over broad, oppressive and unduly burdensome and irrelevant."

I agree with Respondent that the information Complainant requests in this interrogatory is irrelevant to the allegations in her complaint. I therefore deny the motion to compel with regard to this interrogatory.

ACCORDINGLY, it is hereby ORDERED that:

1. On or before October 16, 1992, Respondent shall respond to Interrogatores 3 and 8.

2. On or before December 31, 1992, Complainant shall file with this office a status report as to completion of discovery.

3. Complainant's motion for additional time for discovery is granted in accordance with the directives stated above.

4. Complainant's motion for additional time to file a brief in response to Respondent's motion for summary decision is granted. After discovery is completed, I will issue an order providing Complainant with a filing deadline.

SO ORDERED.

Dated: September 25, 1992

ROBERT B. SCHNEIDER
Administrative Law Judge