

A dancer at an adult entertainment establishment sued her employer in a federal district court for allegedly creating a hostile work environment and engaging in sexual harassment in violation of federal law. The dancer alleged that the employer constantly pressured her to engage in sexual intercourse, but she repeatedly refused his advances.

At the dancer's deposition, the employer's attorney asked the dancer about her sexual history with the employer. The dancer denied having any sexual relations with the employer. In an effort to embarrass the dancer, the employer's attorney asked about her general sexual history. The dancer's attorney objected, directed the dancer not to answer the question, and immediately suspended the deposition.

The next day, the dancer's attorney filed a motion in the court where the dancer's suit was brought for a protective order to prevent the employer from asking the dancer about her general sexual history. The dancer's attorney did not confer or attempt to confer with the employer's attorney before filing the motion.

Is the court likely to grant the protective order?

- A. No, because the dancer did not answer the deposition question.
- B. No, because the dancer's attorney made no attempt to confer with the employer's attorney.
- C. Yes, because the dancer will suffer irreparable harm if the questioning is allowed to continue.
- D. Yes, because the motion was properly filed in the court where the action is pending.

Explanation:

Protective orders

(FRCP 26(c))

Requirements	<ul style="list-style-type: none">• Good cause – to protect parties & persons from annoyance, embarrassment, oppression, undue burden, or undue expense• Certification – movant conferred or attempted to confer in good faith with party seeking discovery to resolve dispute without court action
Filing	<ul style="list-style-type: none">• In court where action is pending or where deposition will occur
Possible contents	<ul style="list-style-type: none">• Forbid, limit, or specify terms for discovery• Prescribe alternative discovery method• Designate persons who may be present during discovery• Require that discovery be sealed & opened only on court order

FRCP = Federal Rule of Civil Procedure.

A **protective order** is a court order issued to protect a party or other person from whom discovery is sought from annoyance, embarrassment, oppression, undue burden, or undue expense. A court will grant a protective order if the movant (1) shows **good cause** for the order and (2) **certifies** that he/she **conferred or attempted** to confer **in good faith** with the party seeking discovery to resolve the matter without court action. The purpose of the conference requirement is to save judicial time and resources by limiting the court's involvement in discovery.

Here, there is good cause to issue a protective order because the employer's attorney asked about the dancer's general sexual history to embarrass her. However, the dancer's attorney made no attempt to confer with the employer's attorney before filing the motion. As a result, the dancer failed to satisfy her duty to confer, and the court will likely *deny* her motion for a protective order.

(Choice A) A protective order can be granted regardless of whether the movant answered the deposition question. But the motion will likely be denied here since the dancer did not make a good-faith attempt to resolve the matter without court action.

(Choice C) Irreparable harm must be shown to obtain a temporary restraining order—not a protective order. A temporary restraining order is sought to prevent immediate and irreparable harm to the movant by keeping the status quo until the court can hold a hearing on the issue. In contrast, a discovery protective order is sought to limit the scope of discovery and prevent abuse.

(Choice D) A motion for a protective order may be filed in the court where the deposition will be taken *or* where the action is pending (as seen here). But since the dancer failed to confer with the employer before filing such a motion, the court cannot grant it.

Educational objective:

A court will grant a protective order if the movant (1) shows good cause for the order and (2) certifies that he/she conferred or attempted to confer in good faith with the party seeking discovery.

References

- Fed. R. Civ. P. 26(c) (protective orders).
- Fed. R. Civ. P. 30(d)(3) (moving to terminate or limit deposition).

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