

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

GEORGE A. MUDROVICH,

Plaintiff,

v.

D.C. EVEREST AREA SCHOOL
DISTRICT, ROGER W. DODD,
ROBERT C. KNAACK, DANIEL
L. HAZAERT, THOMAS R.
OWENS, LAW FIRM OF RUDER,
WARE & MICHLER LLSC, and
RONALD J. RUTLIN,

Defendants.

ORDER

04-C-0398-C

This is a civil suit in which plaintiff George A. Mudrovich is suing defendants for retaliating against him for filing a lawsuit against two of his fellow teachers and for knowingly making false statements during the course of the investigation of plaintiff's claim of an illegal layoff and failure to hire him as a full-time teacher. The case is before the court on plaintiff's motion to disqualify Cari L. Westerhof, Steven M. Anderson and Dean R. Dietrich as counsel for defendants on the ground that he wants to depose these persons about statements they made and about the information they had when they made the

statements.

Although plaintiff has not named Westerhof as a defendant in this case, he alleges that she made false statements in court during proceedings linked to plaintiff's suit against his fellow teachers and in a written statement to a state investigator regarding the selection process used by the school district in hiring a full-time French teacher. He advises the court in his motion that if he learns from his questioning of Westerhof that she did make false statements, he will seek leave of court to add her as a defendant.

It appears that plaintiff is alleging that (1) Westerhof made false representations to the state circuit court about the school district's insurance coverage and that she did this in an effort to persuade the court to impose a monetary sanction against plaintiff for bringing a frivolous suit against his fellow teachers; (2) Westerhof tried to use the monetary sanction as a negotiating tool to persuade plaintiff to give up his effort to obtain legal remedies from the school district for its failure to hire him as a full-time French teacher; (3) Westerhof was aware of false testimony given by deponents concerning previous layoffs by the school district and the reasons for laying off plaintiff; and (4) Westerhof gave false information to the state Equal Rights Division's hearing officer. Plaintiff alleges that Westerhof's false statements to the state court referred to Steven Anderson and Dean R. Dietrich, two other Ruder, Ware & Michler shareholders, and he wants to be able to question them about the state of their knowledge. Plaintiff contends that he needs to question all three lawyers to

learn about their conspiracy with the defendants to commit perjury throughout the state court and administrative proceedings.

As a general rule, the roles of attorney and witness are incompatible. “A witness is supposed to present the facts without a slant, while an attorney's job is to advocate a partisan view of the significance of the facts. One person trying to do both things is apt to be a poor witness, a poor advocate, or both.” Gusman v. Unisys Corp., 986 F.2d 1146, 1148 (7th Cir. 1993) (citing United States v. Trapnell, 638 F.2d 1016, 1025 (7th Cir.1980); United States v. Johnston, 690 F.2d 638, 642-44 (7th Cir.1982) (in banc); ABA, Model Rule of Professional Conduct 3.7(a).

Nothing in plaintiff's motion to disqualify persuades me that plaintiff needs the testimony of Westerhoff, Anderson or Dietrich in order to pursue his case. First, he has not established why it would be relevant to the resolution of this case to know whether defendant school district was covered by insurance at the time that Westerhof made her statements on the subject to the state circuit court. The question in this case is whether plaintiff's layoff or non-hiring was a violation of a federal law, not whether it was legal for the state court to impose monetary sanctions on plaintiff for his lawsuit. Second, plaintiff has not shown why he needs to depose the lawyers about allegedly false statements that others made in their depositions. If he believes that the deponents made false statements and if the statements are relevant to anything involved in this suit, he can impeach them at

trial. He asserts that he would have no difficulty in doing so. Mot. to Disqualify, dkt. #15, at 12. He can do the same thing with respect to Westerhof's November 9, 1998 letter to the Equal Rights Division investigator, if he believes it to be false and if the contents are relevant to this action.

ORDER

IT IS ORDERED that plaintiff George A. Mudrovich's motion to disqualify Cari Westerhof as counsel for defendants is DENIED.

Entered this 6th day of January, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge