

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

KATHLEEN ERMER,

Plaintiff,

v.

TAYLOR COUNTY, WISCONSIN;
SUSAN HARDY, Director,
Taylor County Human Services; and
DAN BROST,

Defendants.

ORDER

05-C-346-C

In this case brought under Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131-12134, plaintiff Kathleen Ermer contends that her rights were violated when defendants refused to allow her to bring her “assistance dog” into the building housing Taylor County Human Services. Both parties have moved for summary judgment. However, plaintiff’s motion must be denied at the outset for her failure to comply with this court’s summary judgment procedures, a copy of which was sent to her with the Magistrate Judge’s preliminary pretrial conference order entered on August 11, 2005.

As an initial matter, I note that even if plaintiff’s submission conformed in every

respect to this court's summary judgment procedures, it could not be considered because plaintiff has not indicated that she served her submission on the defendants. It is her responsibility to send a copy of every document she send to the court to the defendants' lawyer and to show clearly on the court's copy that she has done so. Fed. R. Civ. P. 5.

In any event, plaintiff's "motion" consists of a letter, which the court has construed as a motion despite the absence of a caption as required by Fed. R. Civ. P. 7(b)(2), and three "sections" marked "A," "B" and "C." In Section A, plaintiff appears to be making factual statements concerning the incident giving rise to her complaint. However, none of plaintiff's proposed facts is followed by a cite to evidence in the record to support the proposition. This is contrary to Procedure I.D.2, which states, "At the close of each numbered paragraph, the movant must cite to references in the record supporting the fact proposed in the paragraph."

Section "B" of plaintiff's submission is entitled "Statement." In this document, plaintiff mixes factual statements with legal argument and refers to "exhibits" which make up "Section C." This is contrary to Procedure I.B., which requires that the brief (legal argument) and proposed findings of fact be submitted as separate documents.

Finally, plaintiff's documentary evidence (the exhibits) is not admissible because none of the exhibits has been authenticated. Documentary exhibits on their own are not admissible in evidence. See Procedure I.E. Documents used as exhibits must be

accompanied by an affidavit of the person who has custody of the documents stating what those documents are. For example, during the time of the incident at issue in this case, plaintiff may have filed a grievance with defendant Taylor County and she may have received a response to her grievance. If she were to use the grievance and the response she received as evidence on a motion for summary judgment, she would mark the documents as, say, exhibits “A” and “B,” and attach to the exhibits an affidavit in which she declares or swears under penalty of perjury that the documents marked as exhibits “A” and “B” are true and correct copies of the grievance she filed on such and such a date and the response she received on such and such a date.

Moreover, plaintiff’s letters from witnesses or persons willing to testify on her behalf are not admissible as evidence because the letters are not sworn or declared to be true under penalty of perjury and do not contain the original signatures of the witnesses (the documents are photocopies rather than original documents). The written testimony of individuals who have personal knowledge of matters relating to the incident about which plaintiff is complaining in this lawsuit should be submitted in the form of affidavits. The affidavit should contain a written statement of, for example, the witness’s personal observations of an incident, make clear why the witness was in a position to observe the incident and conclude with a sworn statement or declaration “under penalty of perjury” from the witness that what the witness says in the affidavit is truthful.

Because plaintiff's motion for summary judgment and submissions in support are not in compliance with the court's procedures, they cannot be considered. Therefore, plaintiff's motion will be denied. However, this should not prejudice plaintiff. She will have a chance to submit her version of the facts and evidentiary materials in proper form in response to defendants' motion. Plaintiff is urged to read carefully the court's procedures for responding to defendants' proposed findings of fact and submit her response and evidentiary materials correctly so that they can be considered in deciding the motion.

ORDER

IT IS ORDERED that plaintiff's motion for summary judgment is DENIED for her failure to file a motion that is in conformance with this court's procedures.

Entered this 13th day of January, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge