

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

SCOTT A. KONITZER,
a/k/a Donna Dawn Konitzer,

Plaintiff,

v.

GARY HAMBLIN, JANEL NICKEL,
JANET MINK, CAPTAIN KELLER,
TINA MARTIN, RANDY BECKER, and
CORRECTIONS OFFICER FRAUNDORF,

Defendants.

ORDER

11-cv-426-slc

Plaintiff Scott A. Konitzer, a/k/a Donna Dawn Konitzer, has filed three motions asking the court to direct the clerk's office and court reporter to send her copies of various filings and transcripts. *See* dkt. 131-33. She also has filed an expedited motion for a protective order preventing a second deposition of herself and John Balsewicz. Dkt. 135. I address each in turn:

I. Motion to Order Clerk to Provide Compressed Copies and Waive Fee (dkt. 131)

On September 7, 2012, the clerk's office advised Konitzer that it no longer was able to provide her with compressed printouts of documents (e.g., printing 9 pages on 1 sheet). *See* dkt. 125. Konitzer objects, asserting that converting a file to pdf format only takes a few clicks of the mouse. However, over the past several months, Konitzer has made numerous requests for copies of documents both from her case and from other cases in which defense counsel Monica Burkert-Brist has served as an attorney. Although saving a single file in pdf format is a relatively simple process, Konitzer's requests often require the clerk's office to collate individual pages from multiple files and convert them into a single pdf file. That process is time-consuming, especially given the large number of requests submitted by Konitzer. Moreover, contrary to Konitzer's

assertions, it has never been this court's policy to provide any parties, including pro se litigants, with compressed copies. Because the labor-intensive nature of this service makes it impossible for the clerk's office to provide it to all litigants who might request it, the court cannot continue to provide this to Konitzer. Put another way, this court will treat Konitzer the same as it treats all other litigants.

In the same letter, the clerk's office advised Konitzer that it would charge a search fee of \$30 for each request she made related to the approximately 50 cases in which Burkert-Brist was an attorney. Konitzer states that this fee does not "appear to be applied toward non pro se, non prisoner litigants and [all of the above] conditions were imposed as I was getting closer to evidence I've been seeking with regard to this litigation." Dkt. 131 at 2-3. Konitzer also argues it is an abuse of discretion to charge \$30 to count pages in a particular docket entry. Konitzer is incorrect and her allegations of misconduct are unfounded.

This court did not pull this thirty dollar figure out of a hat: the Judicial Conference Schedule of Fees states that district courts are to charge "[f]or conducting a search of the district court records, \$30 per name or item searched." 28 U.S.C. § 1914 (schedule, ¶ 2). Therefore, each time that Konitzer requests any sort of search of a court record, whether it be for Burkert-Brist's name or a page count on a document filed in one of her cases, a \$30 fee must be charged.

It is not clear why Konitzer is requesting information on other prisoner cases in which Burkert-Brist has appeared as defense counsel, or why she thinks this will be relevant or admissible for any purpose in this lawsuit. That said, how Konitzer spends her time, energy and money is for the most part up to her, but she should not labor under the misapprehension that any of this will end up being useful to her in the instant lawsuit. Obviously, Konitzer has a bone

to pick with Burkert-Brist: earlier this year, Konitzer sought to bring criminal charges against Burkert-Brist for allegedly fabricating evidence. I advised Konitzer then that this court cannot assist her with filing or investigating criminal charges against counsel, the defendants or anybody else. Dkt. 102 at 6. At this point, to obtain the best available outcome in this civil lawsuit, Konitzer might want to think about focusing her efforts on gathering evidence to support her claims of deliberate indifference at summary judgment or trial.

II. Motion to Direct Clerk and Court Reporter to Provide Transcript (dkt. 132)

Konitzer seeks an order to direct the “clerk and the court reporter to provide [her] service of transcript related filings by defendants.” The transcript to which Konitzer refers is of the December 1, 2011 telephonic pretrial conference in this case. After reviewing the motion, I understand Konitzer to be requesting a copy of the transcript order form and a copy of an alleged motion to redact the December 1 transcripts.

To order a transcript in a given case, a person completes the Administrative Office (AO) of the United States Courts form 435 and files it with the court reporters. The form is sent directly to the court reporter and is not filed with the clerk’s office. In other words, the transcript orders sent to the court reporter are not case-related filings as Konitzer implies. The information that Konitzer seeks, therefore, must come directly from the court reporter. In response to Konitzer’s request, that office has reported that Attorney James Gende ordered the December 1, 2011 transcript.

Next, Konitzer seems to be under the impression that a certain statement was made during the December 1 telephonic conference that was omitted from the transcript. In her

motion, Konitzer states that attorney Burkert-Brist made the statement, “Attorney Gende sexually assaulted my client,” during the telephonic conference. Konitzer alleges that the court reporter redacted this statement from the December 1 transcript, presumably at the request of Burkert-Brist. This is incorrect.

A review of the court record indicates that no motions to redact and no redacted transcripts have been filed in this case. In addition, court staff have listened to the audio recording of the December 1 telephonic pretrial conference and have reviewed the transcript. Attorney Burkert-Brist never made any statement to the effect that Attorney Gende assaulted Burkert-Brist’s client. I note, however, that on page 15 of the transcript, Burkert-Brist did make the following statement regarding her request for a stay in another case:

But the other case is in the Eastern District in which one of the defendants is charged with sexually assaulting the inmate plaintiff in my civil lawsuit. So -- and in that case, the Court granted the stay.

Konitzer’s request for “material related to the redactions” is denied as moot.

III. Motion to Order Defendants’ Record Custodians to Provide Plaintiff Certified Copies of Records (dkt. 133)

Following Konitzer’s recent request for certified copies of certain unidentified documents, the records officer at the Columbia Correctional Institution responded that the office only certifies documents when it is mandated by the court. As a result, Konitzer asks that the court enter a standing order for defendants to provide her with certified copies of documents whenever she deems certification necessary.

The court will not enter a blanket order for CCI to provide Konitzer with certified copies of any document that she deems necessary. At this point, the request is premature because neither this court nor the discovery rules require Konitzer to submit certified copies of any documents that she receives from defendants. Konitzer may be anticipating the need for certified copies at summary judgment or trial. However, Konitzer only will need to be concerned about authenticating those documents to which the defendants can raise valid objections as to lack of foundation or authentication, objections defendants are unlikely to make regarding documents they generated that are submitted unredacted and unmarked.

At summary judgment, a party may cite to documents as long as they *can be* “presented in a form that would be admissible in evidence.” Fed. R. Civ. P. 56(c)(2). Documents produced by defendants in response to Konitzer’s discovery requests would fall in this category. In preparation for trial, the parties must identify all documents that they seek to admit into evidence by May 10, 2013, as required by Rule 26(a)(3). *See* Amended Scheduling Order, dkt. 129. The opposing party must then file any objections to those documents by May 24, 2013. At that time, the court would expect defendants to identify any document that it objects to on the ground of authentication (e.g., that it is not a certified copy) in order to allow Konitzer time to respond.

III. Motion to Prevent Depositions (dkt. 135)

Konitzer seeks a protective order under Fed. R. Civ. P. 26(c)(1) to prevent defendants’ proposed depositions of Konitzer and witness Balsewicz. During his first deposition, Balsewicz invoked his Fifth Amendment right against self-incrimination and was unwilling to testify about

the underlying events of the attack, the events leading up to the attack and his prior relationship with Konitzer. Balsewicz also admitted that he had documents involving himself and Konitzer that he was not willing to produce until after the completion of his criminal case. Because of this, defendants were prevented from obtaining information critical to their defense from an essential witness. This caused defendant to seek a stay of this lawsuit pending the resolution of Balsewicz's criminal prosecution, and the court granted this request in the interest of justice. Now that the stay has been lifted, defendants seek to depose Balsewicz and Konitzer about the matters that Balsewicz previously refused to discuss. This is an appropriate request. It does not constitute harassment. Therefore, Konitzer's motion for a protective order will be denied.

In her supporting brief, Konitzer also raises numerous concerns with the way in which defense counsel conducted the previous deposition of Balsewicz, accusing Burkert-Brist of coaching Balsewicz, threatening to charge Konitzer with a stenographer's fee if she did not limit her cross examination to a "reasonable period of time," humiliated Konitzer by referring to her as "inmate" and committed perjury by getting Balsewicz to agree that a document was one five-page letter when it was in fact two shorter letters. The court has reviewed the deposition transcript at issue and finds no inappropriate conduct on the part of Burkert-Brist. Konitzer seems to suggest that some of the objectionable conduct occurred off the record, but as with all of her other allegations against Burkert-Brist, she has failed to offer any actual evidence of misconduct.

This segues to a final observation: Konitzer is not well served by her penchant for making serious accusations against defendant's attorney that she cannot support, and for making unreasonable demands of court staff who are simply following their ordinary practices. This

court cuts pro se prisoner litigants a lot of slack because it realizes how difficult and stressful it can be to prosecute a civil rights lawsuit while incarcerated and without the assistance of counsel. These stressors, however, do not excuse any litigant from exercising basic civility in her interactions with the other people with whom she must interact during the lawsuit. Regardless how angry and suspicious Konitzer feels about what she perceives to be happening here—and so far, her perceptions are unsupported—she would be best served by dialing back her heated rhetoric and strident demands. Here, as in every lawsuit in this court, the court will not tolerate disrespect to others. Here, as in every lawsuit, the court reserves the right to sanction persistent incivility and *ad hominem* attacks on others.

ORDER

IT IS ORDERED that:

- (1) Plaintiff Scott Konitzer a/k/a Donna Dawn Konitzer's motion to order clerk to provide copies and waive fee, dkt. 131, is DENIED;
- (2) Plaintiff's motion to direct clerk and court reporter to provide transcript, dkt. 132, is DENIED as moot;
- (3) Plaintiff's motion to order defendants' record custodians to provide certified copies, dkt. 133, is DENIED as premature; and
- (4) Plaintiff's motion for a protective order to prevent second depositions, dkt. 135, is DENIED.

Entered this 26th day of October, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge