

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

JENNIFER PETKUS,

Plaintiff,

v.

ORDER

RICHLAND COUNTY and
WISCONSIN COUNTY
MUTUAL INSURANCE CORP./
AEGIS CORPORATION,

12-cv-104-wmc

Defendants.

Plaintiff Jennifer Petkus is proceeding *pro se* on claims against defendant Richland County for violations of the Fourth Amendment and negligence in executing search warrants on her property in May of 2009, as well as against the county's insurance company, defendant Wisconsin County Mutual Insurance Corporation/Aegis Corporation, for declining to pay her claim against the county.¹ Trial in this case is set for April 22, 2013.

Pursuant to the court's March 11, 2013 trial preparation order, both parties have submitted motions in limine. Petkus has also filed three discovery motions.

I. Motions in Limine

A. Plaintiff's Motion

¹ Plaintiff's claims against her own insurer, Wilson Mutual Insurance Company, were previously dismissed on summary judgment. (Dkt. #41.)

In her motion in limine, Petkus asks that “any personal information, including medical and financial records” be excluded. As defendants point out, this request is too vague for the court to make a relevance or prejudice determination at this point. Accordingly, this part of the motion will be denied, but Petkus will be free to object to specific evidence brought forward by defendants before or at trial.

Petkus also asks for “any records from the criminal case which could have a potential effect of retrying [her]” to be excluded, on the basis that such records “are irrelevant, immaterial, unreliable or unduly prejudicial and/or that their probative value is outweighed by the prejudicial result to the plaintiff. Defendants state that Petkus does not indicate which criminal case she is talking about. At this point, the court will assume that Petkus is referring to Richland Circuit Court case no. 2009CM000082, which appears to be the state criminal case arising out of the same searches at issue in this case. Again, however, Petkus’s stated grounds are extremely vague. Any evidence defendants wish to raise will, of course, be subject to the Rules of Evidence at trial, but this part of Petkus’s motion will be denied without prejudice, subject to revisiting at the final pretrial conference, provided greater detail is offered as to the precise nature of the evidence sought to be excluded.

Finally, Petkus asks for an order allowing “testimony or other evidentiary materials from deceased Richland County Board Members.” Defendants note that the evidence is likely to be hearsay and suggest that such testimony was not included on her witness list. As with Petkus’s other requests, she does not describe this evidence with any

specificity, so the motion will be denied as premature. Petkus should be prepared to make a proffer as to any such evidence at the final pretrial conference.²

B. Defendants' Motion

Turning to defendants' motion in limine, they ask that Petkus be prohibited from providing any opinion evidence or conclusory statements regarding the validity of the search warrants for her properties or the execution of the search warrants. They also ask that Petkus be prohibited from testifying with regard to law enforcement policies and procedures, including the policies of the Richland County Sheriff's Department. This part of defendants' motion will be tentatively granted, at least in part. In her capacity as a witness, Petkus will not be able to express legal conclusions about the validity of the search warrants or police procedures. She is free, however, to testify as to actual events that she witnessed before, during or after the search. She is also free to present other evidence such as the search warrants or Sheriff's Department policies themselves. Finally, as Petkus is acting *pro se*, she may be able to argue about the application of the evidence to legal standards set forth for the jury by the court at the appropriate time (such as in her closing argument).

More generally, defendants ask that Petkus be prohibited from providing testimony on issues of fact that she does not have personal knowledge of, including

² The court notes that the Wisconsin "Dead Man's Statute," Wis. Stat. § 885.16, may apply to such evidence, at least as it pertains to Petkus's state law claims.

testimony based on assumptions, hearsay, conclusory statements or speculation. This request will be denied in the abstract because it constitutes no more than a restatement of the Federal Rules of Evidence. Petkus should be aware of these rules and will be expected to follow them at trial. In addition, rather than merely wait to object at trial, defendants are free to make a proffer as to *specific* testimony they believe should be excluded for lack of personal knowledge at the final pretrial conference.

II. Discovery Motions

Finally, Petkus filed a motion on December 7, 2012, to compel defendants to respond to her first set of interrogatories. (Dkt. #29.) Defendant Wilson Mutual Insurance Company has already been dismissed from the suit, so that portion of the motion will be denied as moot. As for defendants Richland County and County Mutual Insurance's response, they point out that Petkus did not certify that she first attempted to confer with defendants to obtain discovery before seeking a court order. Moreover, defendants argue the interrogatories that Petkus specifically mentions in her motion appear to have been answered by defendants; she just disagrees with the answers. Indeed, defendants have filed a motion for reimbursement of their reasonable expenses incurred in responding to the motion under Fed. R. Civ. P. 37(a)(5)(B). The court cannot order reimbursement "if the motion was substantially justified or other circumstances make an award of expenses unjust." *Id.* Accordingly, Petkus will be given until noon on Tuesday, April 16, 2013, to respond to that motion in writing.

Petkus's second motion is for leave to serve additional interrogatories. Petkus appears to be aware of the 25-interrogatory limit, but argues that each subpart to her interrogatories should not be counted individually. For defendants' part, they simply stopped answering her interrogatories after she hit 25 subparts in an apparent reliance on Fed. R. Civ. P. 33, which specifically states that "all discrete subparts" of an interrogatory should be treated separately. While it appears Petkus can ascertain responses to most of the questions left unanswered by defendants by utilizing the police report summarizing events, to which she already has access, the court will require that written answer to the remaining subparts be served and filed with the court by noon on Tuesday, April 16, 2013. To the extent Petkus wished to serve *new* interrogatories, she does not explain what they are, making it impossible to evaluate whether they are a necessity. Moreover, she has waited too long to seek this relief. Accordingly, her motion will be denied.

Finally, Petkus has filed a motion to compel discovery of various documents related to the search of her properties, such as a copy of the Sheriff's policies regarding search and seizures, copies of Richland County Board records concerning her properties and photos of the horses that were taken. Normally, written discovery must be served 30 days before the discovery deadline, which was March 22, 2013, in this case. Petkus made her requests on March 15, 18 and 19, giving no reason why these requests were made so close to the discovery deadline, and the requests seem voluminous enough that it would have been unduly burdensome for defendants to supply these materials with the 3-7 days remaining before the cutoff date. However, Petkus is proceeding *pro se* and most

of these documents would appear to be records for which Petkus could (and at least theoretically still could) make an open records requests. Accordingly, her motion to compel will be granted in part to the extent that defendants are to make a good faith effort to produce relevant, responsive documents by noon on Tuesday, April 16, 2013.

ORDER

IT IS ORDERED THAT:

- (1) Plaintiff Jennifer Petkus's motion in limine (dkt. #53) is DENIED.
- (2) Defendants Richland County and Wisconsin County Mutual Insurance Corporation's motion in limine (dkt. #47) is GRANTED IN PART and DENIED IN PART as discussed above.
- (3) Plaintiff's first motion to compel (dkt. #29) is GRANTED IN PART and DENIED IN PART as discussed above.
- (4) Plaintiff may have until noon on April 16, 2013, to respond to defendants' motion for expenses incurred in responding to the motion to compel.
- (5) Plaintiff's motion to serve additional interrogatories (dkt. #33) is DENIED.
- (6) Plaintiff's second motion to compel (dkt. #54) is GRANTED IN PART and DENIED IN PART as discussed above.

Entered this 12th day of April, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge