

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

-----  
JUAN M. PÉREZ,

Plaintiff,

ORDER

v.

06-C-248-C

MATTHEW J. FRANK, RICHARD RAEMISCH,  
CATHERINE FARREY, LIZZIE A. TEGELS,  
SUE NAULT, MELANIE FAUST, MARK  
TESLIK, GREG GRAMS and TIMOTHY LUNDQUIST,

Defendants.  
-----

In an order dated April 19, 2006, I directed the parties to exchange with each other and file with the court no later than May 14, 2007, (a) proposed questions for voir dire examination; (b) a proposed form of special verdict; and (c) proposed jury instructions; (d) a copy of all exhibits and an exhibit list; and (e) motions in limine. I explained the need for the parties to prepare their exhibits in advance of trial as follows:

**Please note:** As they are presently drafted, the procedures do not require the parties to exchange copies of their trial exhibits in advance of trial. However, the court has determined that modification of the procedures to include this additional requirement is necessary for two reasons. First, it insures that the parties will consider carefully what documentary evidence they will need to prove the elements of the claims for which they carry the burden of proof at

trial and to obtain authentication of the documents before coming to trial, if necessary. Second, it promotes the efficient conduct of the trial by allowing each party to examine the opposing parties' exhibits in advance of trial so that objections to the admissibility of the documents may be taken up at the final pretrial conference outside the presence of the jury. The parties should be prepared to explain at the conference their grounds for objecting to a particular exhibit.

Now plaintiff has written a letter dated April 24, 2007, in which he asks whether he needs to resubmit exhibits he provided the court and opposing counsel in connection with his motion for summary judgment. The answer is "yes."

At the time the parties briefed plaintiff's motion for summary judgment, plaintiff submitted 169 marked exhibits. Not all of those exhibits are relevant to prove the elements of the claims that are proceeding to trial. For example, exhibits such as defendants' responses to plaintiff's requests for admissions or interrogatories are not evidence for the purpose of trial, except in the rare instance they are needed to impeach a defendant's contrary testimony at trial. In addition, some of the exhibits are not authenticated as they must be if plaintiff wishes to introduce them at trial. The court discussed in detail in the April 19 order at p.9 what plaintiff must do to obtain properly authenticated documentary evidence. (For the parties' information, defendants waived objections to the admissibility of plaintiff's exhibits for the purpose only of deciding plaintiff's motion for summary judgment when they failed to respond to plaintiff's proposed findings of fact. However, this waiver does not carry over to trial.)

In sum, plaintiff must figure out which documents he needs to prove the elements of the claims on which he is proceeding to trial, obtain authentication of those documents requiring authentication from persons having personal knowledge of the particular document, and submit them to the court and opposing counsel within the time allowed.

Plaintiff also has moved for the appointment of counsel, saying that he does not possess “legal training” that would enable him to competently try his case. That request will be denied. Plaintiff does not have to be a legal expert to try his case. The manner in which trial will proceed was explained to him in the April 19 order. Moreover, plaintiff should not find it any more difficult to try his case than he did to present his claims for resolution on a motion for summary judgment. He already has shown himself to be more astute than the vast majority of pro se litigants in that regard. His submissions were well organized and expertly written. Indeed, he succeeded in proving his entitlement to summary judgment on four of his claims. I conclude that considering the nature of plaintiff’s claims, plaintiff is capable of presenting his case at trial and that having a lawyer will not make a difference in the outcome of the lawsuit.

#### ORDER

IT IS ORDERED that plaintiff’s motion for appointment of counsel to represent him

at the trial of this case is DENIED.

Entered this 30th day of April, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge