

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

CHARLES E. HENNINGS,

Plaintiff,

v.

DAVE DITTER (BSI),

Defendant.

ORDER

06-C-0353-C

A final pretrial conference was held in this case on August 6, 2007 before United States District Judge Barbara B. Crabb. Plaintiff in person without counsel. Defendant Ditter appeared in person and by Karla Keckhaver and David Hoel, Assistant Attorneys General for the State of Wisconsin.

The parties predicted that the case would take 1 day to try. Trial selection will take place on August 6; the trial itself will begin at 9:00 on Wednesday, August 8. They understand that trial days will begin at 9:00 and will run until 5:30, with at least an hour for lunch, a short break in the morning and another in the afternoon.

The parties agreed that the witnesses would not be sequestered. They are either familiar with the court's visual presentation system or will make arrangements with the clerk

for some instruction on the system.

Defendant's counsel and Mr. Hennings should use the microphones at all times and address the bench with all objections. If they need to consult with one another, they should ask for permission to do so. Only the person questioning a particular witness may raise objections to questions put to the witness by the opposing party and argue the objection at any bench conference.

The parties are to provide the court with copies of documentary evidence.

The parties agreed to the voir dire questions in the form distributed to them at the conference. The jury will consist of seven jurors to be selected from a qualified panel of thirteen. Each side will exercise three peremptory challenges against the panel. Before Mr. Hennings and defendant's counsel give their opening statements, the court will give the jury the introductory instructions on the way in which the trial will proceed and their responsibilities during the trial.

The parties discussed the form of the verdict and the instructions on liability. Final decisions on the instructions and form of verdict will be made at the instruction conference once all the evidence on liability is in.

The following rulings were made on the parties' motions in limine.

1. Defendant's motion to exclude evidence relating to motions for temporary restraining orders filed against defendant by staff members at Columbia Correctional Institution is

GRANTED. Such orders are not probative of defendant's likelihood to have retaliated against plaintiff simply because plaintiff filed an appeal of his conduct report and discipline and they are not admissible as other bad acts under Fed. R. Evid. 404(b).

2. Defendant's motion to exclude evidence related to defendant's disciplinary actions is GRANTED for the same reasons.

3. Defendant's motion to exclude evidence related to settlement offers or negotiations is GRANTED. Fed. R. Evid. 408(a) makes such evidence inadmissible to prove liability or damages.

4. Defendant's motion to exclude evidence related to emotional harm that plaintiff may have suffered is GRANTED because plaintiff has not alleged that he suffered any physical harm as a result of defendant's actions.

5. Defendant's motion to exclude evidence related to monetary damages incurred by plaintiff prior to the date of the alleged retaliation is GRANTED.

Rulings on exhibits:

1. Plaintiff's motion to exclude defendant's exhibits 519-523 is GRANTED; these exhibits relate to incidents that have no relevance to the print shop supervisor's decision not to rehire plaintiff.

2. Defendant's motion to exclude plaintiff's exhibits 8 and 13-18 is GRANTED.

Entered this 6th day of August, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge