

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

CARLA ZASTROW and
REBECCA BOE,

Plaintiffs,

v.

LARRY TAFT, in his individual
capacity,

Defendant.

PRELIMINARY PRETRIAL
CONFERENCE ORDER

06-C-499-C

This court held a recorded telephonic preliminary pretrial conference on December 28, 2006. Defendant is representing himself and appeared without an attorney. All other parties were represented by counsel. The court set the schedule and discussed with the parties how this case will go forward.

Important Information

So that there are no misunderstandings or mistakes, I am reminding the parties of some important points:

Read this whole order NOW

This federal civil lawsuit is a serious matter. As a party to a federal civil lawsuit, it is your duty to understand what you are supposed to do and when you are supposed to do it.

To help you, this order explains what your duties are and what your deadlines are. This court has a number of rules that you must follow. It will not be easy to do everything that you are supposed to do, and you will not have a lot of time. Therefore, it is important for you to read this order now so that you can do things the right way.

Review the Federal Rules of Civil Procedure

The Federal Rules of Civil Procedure are the rules that control much of what happens in this lawsuit. Not all of those rules will be important in your case, but some of them will be very important, particularly the rule about summary judgment and the rules about discovery. It is your duty to know the rules of procedure that apply to you in this case. This court cannot provide you with a copy of the rules of procedure. You will have to find your own copy of the rules to review.

The Federal Rules of Evidence could be important later in this lawsuit. The rules of evidence affect the parties' submissions for summary judgment motions. Also, if this case goes all the way to trial, the rules of evidence will affect how the evidence is presented at trial. It is your duty know the rules of evidence that apply to you in this case. This court cannot provide you with a copy of the rules of evidence. You will have to find your own copy of the rules to review.

Service of documents on your opponent is REQUIRED:

Every letter, motion, brief, exhibit, or other document that you file with the court in this lawsuit must be served on your opponent at the same time. This means that whenever you mail a document to the court, you also must mail a copy of that document to your opponent at the same time. To prove that you did this, you must **certify service** by including with each submission to the court a sentence at the end of your document, or on a separate piece of paper, in which you swear or certify that you sent a copy through the mail with proper postage to your opponent's lawyer.

There is no acceptable excuse for not serving your documents on your opponent. If you do not serve your documents on your opponent and if you do not certify service, then this court will not look at your documents. There are no exceptions to this policy.

You are responsible for making or obtaining your own copies

This court will not make copies for you and it will not give you money to make copies.

Scheduling

1. Decision on consent: January 12, 2007

Right now, District Judge Barbara B. Crabb is the trial judge and the summary judgment judge in this case. Magistrate Judge Crocker is the judge assigned to handle other

matters, like scheduling and discovery. If a party wishes to change judges so that Magistrate Judge Crocker also becomes the trial judge and the summary judgment judge, then that party must send a consent letter to the clerk of court by the deadline, saying that this is what he wants to do. If both sides send a letter to the clerk of court, then Magistrate Judge Crocker will become the trial judge and the summary judgment judge.

2. Amendments to the Pleadings: February 9, 2007

Amendments to the pleadings pursuant to Rules 13-15 and 20-21 must be filed and served not later than the date set forth above. The parties must attempt to obtain a stipulation to the proposed amendment. In the absence of a stipulation, the parties must accompany the proposed amendment with a motion for leave to amend in which the parties aver that a stipulation to the amendment was sought but not obtained. Absent a stipulation, a party may not amend the pleadings after the deadline without leave of court, which will be granted only upon a showing of good cause for the late amendment and lack of prejudice to the other parties.

3. Disclosure of Expert Witnesses: Plaintiffs: March 2, 2007

Defendant: March 30, 2007

Because expert witnesses are different from other witnesses, there is a special rule telling how plaintiffs and defendants must name their experts and explain what those experts

are going to say at trial. That rule is Rule 26(a)(2) of the Federal Rules of Civil Procedure. If a party does not follow the requirements of Rule 26(a)(2) by his (or her) deadline to disclose expert witnesses, then this court will not allow that expert witness to present evidence in this case.

This court does not have any money to help parties hire an expert witness. This court does not have any lists or other information that would help parties locate or contact an expert witness. The parties are on their own and they should keep this in mind if they think they might want expert witnesses in this case. There is no extra time in the schedule to allow for extensions, so the parties should begin looking for expert witnesses right away if this type of witness might be important for summary judgment or for trial.

4. Deadline for Filing Dispositive Motions: April 13, 2007

There are two kinds of dispositive motions: (1) motions to dismiss, and (2) motions for summary judgment. No one may file a dispositive motion after the deadline unless the court grants permission. The court usually does not grant permission to file a late motion, so you must work hard on this case to meet the deadlines.

A) Motions To Dismiss

Motions to dismiss usually do not require the parties to present evidence or to take discovery. If a defendant files a motion to dismiss, he (or she) must submit a supporting brief at the same time.

Plaintiff must file and serve his response to a motion to dismiss within 21 calendar days of service of the motion. The court starts counting these 21 days on the day the motion to dismiss is filed with the court. Any reply brief by the defendant must be filed and served within 10 calendar days of service of the response.

B) Motions for Summary Judgment

Summary judgment is a way for plaintiff or defendants to win this lawsuit (or parts of it) before the trial. Rule 56 of the Federal Rules of Civil Procedure explains how the parties must present their evidence and their legal arguments when they file or respond to a summary judgment motion. Rule 56 is important, so you should read it carefully, even before a summary judgment is filed, so that you can be ready for a summary judgment motion and then to do things correctly.

This court has a written set of rules that explains how to file a summary judgment motion and how to respond to your opponent's summary judgment motion. This "Procedure Governing Summary Judgment" is attached to this order and you should read it **now**. This will help you to understand how much work will be involved, and understand the parts that give parties trouble, like writing good responses to their opponent's proposed findings of fact.

Because it is very hard for a pro se party to prepare everything needed to respond to a summary judgment motion, the court will give you 30 calendar days to file every part of your response and to serve it on the opposing attorney. The court will start counting your 30 day response deadline on the day that it receives plaintiff's motion for summary

judgment. Any reply must be filed and served not later than 10 calendar days after service of the response.

BE AWARE: you are not going to get an extension of this 30 day deadline. The only way to get more time would be if you can convince the court that something totally unfair happened that actually prevented you from meeting your deadline, and this was completely somebody else's fault. Some things that might seem unfair to you are **not** reasons to get more time. For example, you will not get more time just because you claim that you did not have enough time or money to make copies. You will not get more time if you waited too long to get all the information you think you need to respond to the motion.

Also, if you do not follow the court's procedure for how to respond to summary judgment, then you will not get more time to do it over unless the court decides on its own that you should get a second chance.

The only way to make sure that the court will consider your documents is to start early, do them right the first time, and file them and serve them on time. If you do not do things the way it says in Rule 56 and in the court's written summary judgment procedure, then the court will not consider your documents.

A party may not file more than one motion for summary judgment in this case without first getting permission from the court.

5. Disclosure of Trial Witnesses

Not later than 28 days before trial each party shall serve on all other parties all of the materials listed in Federal Rule of Civil Procedure 26(a)(3)(A), (B) and (C). Also, the parties must follow this court's written Procedures for Calling Witnesses to Trial, a copy of which is attached to this order. If you intend to call any other party (that is, a named plaintiff or a named defendant) as a trial witness, then you must list that party as a trial witness and arrange for a subpoena or a writ, just like any other witness. If you do not do all of these things by the deadline, then the court might not allow you to present witnesses at trial.

6. Final Pretrial Conference: September 6, 2007 at 4:00 p.m.

Not later than seven calendar days before the final pretrial conference both sides shall submit to the court and serve all of these documents:

- a) Exhibit lists
- b) Motions *in limine* (and any necessary briefs or documents in support)
- c) Proposed voir dire questions
- d) Proposed jury instructions
- e) Proposed verdict forms
- f) Any objections to an opponent's designations under Rule 26(a)(3).

The way to prepare and to submit proposed voir dire questions, jury instructions and verdict forms is set forth in the written Order Governing Final Pretrial Conference, which is attached.

As noted earlier in this order, the parties must file deposition transcripts promptly with the Clerk of Court. Any deposition that has not been filed with the Clerk of Court seven calendar days before trial shall not be used by any party for any purpose at trial.

7. Trial: September 10, 2007 at 9:00 a.m.

The parties estimate that this case will take two to three days to try.

Trial shall be to a jury of seven and shall be bifurcated. This means that the parties will offer evidence and arguments only on the issue of liability, that is, whether plaintiff has proved his claims. If the jury find that the plaintiff has met his burden, then the parties will offer evidence and arguments on the issue of damages.

This case will be tried in an electronically equipped courtroom and the parties may present their evidence using this equipment. It is up to the parties and lawyers to check whether their personal electronic equipment works with the court's electronic equipment.

The parties must have all witnesses and other evidence ready and available to present at trial in order to prevent delay. If you are not ready with your witnesses or other evidence ready when it is your turn, then the court could end your presentation of evidence.

8. E-Filing.

Parties in this lawsuit may file documents with the court electronically. If you choose to file electronically, then you must follow the court's procedures in order to ensure that the

court properly receives and docket each submission. The court's procedures, FAQ page, and related information may be found at www.wiwd.uscourts.gov.

9. Electronic Notification

Parties in this lawsuit may receive court notices, briefing schedules and orders electronically. If they choose to participate in this program, they must follow the court's procedures. The court's procedures and related information may be found at www.wiwd.uscourts.gov.

Entered this 28th day of December, 2006.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge