

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, *et al.*,

Defendants.

ORDER

11-cv-426-slc

A number of motions and requests filed by plaintiff Konitzer have accumulated since January, 2013. This order addresses and rules on them.

Since filing this lawsuit, Konitzer has filed a remarkable number of motions, requests, demands and pronouncements in captioned and letter format. Some are directed to court staff or this judicial officer, some are directed toward the defendants or the assigned state assistant attorney general. Some are typed, some are handwritten. Some are terse, some are prolix., Some are neutral and dispassionate, some are angry and accusatory. Some are relevant to the issues actually before the court in this lawsuit, some deal with matters and concerns that have no discernible relevance to Konitzer's actual claims against the defendants. Some of the issues Konitzer raises are mundane, some are fantastical. *See, e.g.*, dks. 26, 28, 35, 36, 37, 38, 40, 45, 49, 51, 58, 60, 65, 72, 74, 76, 78, 81, 84, 91, 93, 96, 97, 98, 99, 100, 101, 109, 116, 122, 126, 127, 131, 132, 133, 135, 139, 140, 142, 143, 144, 166, 169, 170, 171, 174, 176, 179, 185, 186, 188, 191, 192, 193, 195, 197, 198, 200, 203 and 206. This list does not include all of the briefs and affidavits that Konitzer has filed in conjunction with her motions, request and demands. Themes running through many of Konitzer's filings are that at various times (if not constantly), everyone involved in this lawsuit—the court, its staff, court reporters, the assistant attorney general, the defendants, prison officials, witnesses, *et al.*—have treated Konitzer unfairly, often maliciously, perhaps as part of a conspiracy or several different conspiracies. Nothing that

anyone has done or is prepared to do in response to Konitzer's filings has allayed or will allay Konitzer's firmly-held beliefs on these points. As this court's March 15, 2013 text-only order shows, it is difficult even to keep up with Konitzer's regular filings. This order is intended to rule on the remaining group and set a genuinely final deadline for Konitzer's response to defendants' January 14, 2013 motion for summary judgment.

Dkt. 170: Request for a discovery conference and rescheduling order

Dkt. 171: Expedited first motion to compel discovery

In **dkt. 170**, Konitzer accused the defendants of refusing to provide meaningful non-evasive discovery; in **dkt. 171**, Konitzer asked the court to order defendants to properly respond to her interrogatory requests and requests for production of documents. In an accompanying brief (**dkt. 172**), plaintiff complains that defendants did not answer her first set of interrogatories while this case was stayed, the responses were made by defendants' attorney, and the responses were not notarized. When plaintiff tried to resolve these concerns with defendants' attorney, opposing counsel's letters were non-responsive, she refused to provide public documents and documents for which any claim of privilege was waived. Many documents that defendants did produce were not what Konitzer asked for, were insufficiently legible to be used as evidence. Descending into specifics, plaintiff objected to defendants' responses to her first set of interrogatories ¶¶ 1, 2, 3, 4, 5, 6, 7, and to her second set of interrogatories ¶¶ 1, 2, 3, 4, 6, 7, 8, 9, 11, 12 and 13. Konitzer outlined why her requests were appropriate and why the defendants' responses were inappropriate. Konitzer attached copies of her correspondence with defendants' attorney,

The state has responded with a point-by-point refutation of Konitzer's accusations. *See* Defendants' Response, **dkt. 181**, and affidavit in support, **dkt. 182**. I have read Konitzer's discovery demands and the defendants' response to them. Relevant to the court's review of this

discovery dispute are the claims on which Konitzer is proceeding in this lawsuit (*see* October 3, 2011 order granting leave to proceed, **dk. 16**) and the defendants' proposed findings of fact in support of their pending summary judgment motion (**dk. 157**) which cites to the defendants' affidavits, CCI records and reports, and the deposition testimony provided by Konitzer and Balsewicz. *See* **dkts. 153-54** and 158-65. Having considered all of these documents, and having considered both sides' arguments, I find that there are only two types of information that the defendants have declined to provide as part of discovery that Konitzer is entitled to discover.

First, Konitzer is entitled to know if Officer Martin ever actually has been found by DOC to have written an inaccurate report and whether she was disciplined as a result of any such finding. If there is responsive information, defendants must disclose it to Konitzer not later than March 29, 2013.

Second, in the court's leave to proceed order, the court noted that Konitzer alleged that Balsewicz had "a known history of violence inside prison." *See* Complaint, **dk. 1** at 12, ¶ 20, October 3, 2011 order, **dk. 16** at 2. Konitzer is entitled to know whether Balsewicz had a documented history of violent acts inside the prison system as of November 12, 2010, the date that Balsewicz attacked Konitzer. What is relevant and discoverable is any actual finding by any DOC disciplinary body at any institution that Balsewicz engaged in any violent acts or made threats to commit violent acts against any other prisoner or staff member, or caused any damage to physical property in any institution. (Based on defendants' proposed finding of fact No. 26, *see* **dk. 157** at 6, and the affidavit of Janel Nickel, **dk. 165** at ¶ 12, I surmise that this will be a brief report, but Konitzer is entitled to more detail. Further, to the extent this information has not already been provided by each defendant in his/her affidavit or otherwise, each defendant who actually worked at CCI in November, 2010 must state whether he or she had any knowledge of any such disciplinary findings against Balsewicz or had any other knowledge or belief prior to November 12, 2010 that Balsewicz was a potentially violent inmate, either in

general or toward Konitzer in specific. The deadline for the disclosure of any new information on this point also is **April 1, 2013**. Because this is only ten days hence, the defendants' attorney may proffer any new information in a letter, with any new affidavits to follow in due course.

That's it. Konitzer is not entitled to any further discovery from the defendants beyond that which they already have provided in response to the requests she has cited in her motions to the court. Konitzer's repeated claims of obstructive, evasive and meaningless responses to her broad, poorly-focused discovery requests are unsupported.

Dkt. 174: Motion for extension of time to file deposition errata statement

On January 22, 2013, Konitzer requested an extension of her deadline under F. R. Civ. Pro. 30(e) to file an errata statement regarding her deposition and Balsewicz's deposition, claiming that there was an apparent calculated delay in providing her with a copies of the transcripts. The defendants oppose this motion, pointing out that Konitzer has no standing to review another witness's transcript, and that she did not timely request a chance to review her own deposition. *See* **dkt. 183**. The defendants are correct as to the Balsewicz deposition, and as a procedural matter, Konitzer's failure to make a Rule 30(e)(1) request before the conclusion of her own deposition has derailed the procedures required by Rule 30(e)(2) and 30(f). So, as a technical matter, the motion is denied. Even so, if Konitzer wishes to file a list of alleged changes and her reasons for them, she may do so as a stand-alone challenge to the accuracy of the transcription, which the court will consider in due course. Konitzer's deadline is **April 1, 2013**.

Dkt. 185: Expedited motion for sanctions pursuant to Rule 11(b)

Dkt. 186: Expedited motion for Rule 37 sanctions

Konitzer claims that defendants's response (**dkt. 181**) to Konitzer's discovery motions (**dkts. 170-71**, above) is sanctionable because defendants have intentionally have misled the court in an attempt to make their interaction with Konitzer on discovery issues look reasonable when in fact it is indefensible. Konitzer simultaneously filed a motion for Rule 37 sanctions, asking the court to enter judgment against all defendants because of discovery abuses by the defendants and by their attorney. In her supporting brief (**dkt. 187**), plaintiff takes issue with virtually every discovery response she received, including, by way of example, Konitzer's requests for discovery regarding "email and phone bill records and info on when and how and by who the exhibits of the John Balsewicz deposition were sent to defendant's counsel." *Id.* at 5. Konitzer also complains at length about how defendants' attorney interfered with Konitzer's attempts to question Balsewicz at Balsewicz's deposition.

In a response brief (**dkt. 189**), defendants stand by their responses, explaining their reasons for doing what they did and for declining to do what they did not do. As for Konitzer's demands for Balsewicz's medical, psychiatric and security information, the defendants report that they cannot provide this to Konitzer without releases from Balsewicz; they provided Konitzer with release forms to send to Balsewicz; there is no indication that she had contacted him. This may seem odd, given the nature of Konitzer's claims in this lawsuit, but as the state points out, the evidence presents wildly divergent pictures of the nature and extent of the pre-attack relationship between Konitzer and Balsewicz, and the back-and-forth between Konitzer and Balsewicz at Balsewicz's deposition suggests a mutual curiosity that transcends ordinary discovery in a failure-to-protect case. This segues to the defendants' attorney's explanation of her conduct during the Balsewicz deposition, about which Konitzer vigorously complains. *Id.* at 6-10. A reading of the entire deposition transcript (**dkt. 154**) reveals that for the most part,

AAG Burkert-Brist facilitated an orderly and efficient deposition, *see, e.g., id. at* 35-38, 52-53, 74-75, 80-82, 85-86, 90-91, 132, 134-46, 138-39, and 155-57. Yes, there were disputes about several matters, but defendants' attorney did not prevent Konitzer from adducing evidence *actually relevant* to the claims against prison staff in this failure-to-protect lawsuit, and Konitzer had a more than adequate opportunity to question Balsewicz in this regard.

As noted earlier in this order, the court has reviewed all the relevant submissions and has found that defendants have fulfilled their discovery obligations to Konitzer with two arguable exceptions that are minor and unexceptional. Given Konitzer's oft-stated opinion that everyone involved in this lawsuit is treating her unfairly, *see supra*, the court is past the point of either trying to explain to Konitzer why she is incorrect or suggesting that she tone down her accusatory rhetoric. Konitzer will not be mollified. Suffice it to say that the documents that form the basis for this motion are of record and speak for themselves. I am denying Konitzer's two motions for sanctions due to alleged discovery abuses by the State.

Dkt. 188: Motion to appoint counsel

Konitzer renews her motion for appointment of counsel (in a neatly-typed motion in contrast to her handwritten submissions). Konitzer claims that she is "barely functioning psychologically, has sever depression to the point of being psychologically disabled at times in addition to the Plaintiff's Post Traumatic Stress Disorder." Dkt. 188 at 2. The record Konitzer has made in this case belies this self-description. True, the irrational certitude and vigor of Konitzer's belief that everyone involved in this lawsuit is actively disrupting her ability to litigate it properly tends to show that Konitzer's psychological and emotional states are affecting her decision-making and tactical choices in this lawsuit.

On the other hand, this same certitude and vigor, demonstrated by her virtually incessant motions practice, demonstrates that Konitzer is highly capable of litigating this lawsuit by herself

if she would simply focus on what the defendants knew about any danger that Balsewicz posed to her personal safety, when they knew it, and what they did or didn't do about it. Konitzer's claim is factually and legally straightforward and she has had—and still has—the ability, time and resources to develop an adequate record to respond to defendants' pending summary judgment motion. I am denying this latest motion to appoint counsel without prejudice and I am requiring Konitzer to respond to the pending summary judgment motion. We can revisit the need for counsel if this case makes it to trial.

Dkt. 193: Motion for entry of default

This is just a variation on Konitzer's motions for sanctions under Rules 11 and 37 and I am denying for the reasons stated above.

Dkt. 195: Motion for extension of time to file notice of appeal

Konitzer states her intention to take another interlocutory appeal as to this court's rulings against her on previous discovery motions so that she can gather all of the subsequent additional adverse rulings into one motion "under the collateral order and practical finality doctrines." I will deny this motion as well. No court ruling in this case so far involves a controlling question of law as to which there is a substantial ground for difference of opinion and an appeal at this point would not materially advance the ultimate termination of this litigation. This would be Konitzer's second interlocutory appeal in this case, *see* dkt, 105 and all the first one accomplished was a two-month delay in the proceedings. Although Konitzer distrusts everything this court tells her, it would be more efficient for her to litigate this case to its conclusion in the district court and then, if necessary appeal everything at once.

Dkt. 203: Expedited Rule 56(d) Motion for Extension of Time

Plaintiff asked for a one-week extension of her March 15, 2013 deadline to file her summary judgment response. She already has received that and more: I am requiring that certain discovery be provided to Konitzer by April 1, 2013 and I will add two weeks beyond that, to April 15, 2013 as her deadline to respond. But that's really it. The defendants' reply will be due by April 26, 2013.

As a result of all these delays, it is unlikely that we will be able to keep the June 10, 2013 trial date, but that's not today's concern. For now, the remainder of the schedule remains in place.

ORDER

It is ORDERED that:

(1) Plaintiff's motions docketed as 174 and 203 are GRANTED in the manner and for the reasons stated above.

(2) Plaintiff's motion docketed as 171 is GRANTED IN PART and DENIED IN PART in the manner and for the reasons stated above.

(3) Plaintiff's motions docketed as 170, 185, 186, 188, 193 and 195 are DENIED for the reasons stated above.

Entered this 22nd day of March, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge