

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
AT NEW ALBANY

LINDA G. SUMMERS)	
)	
Plaintiff)	
)	
vs.)	Case No. 4:15-CV-00093-RLY-DML
)	
SALLY WHITIS in her official capacity)	
As HARRISON COUNTY CLERK)	
)	
and)	
)	
HARRISON COUNTY, a political)	
Subdivision of the State of Indiana)	
)	
Defendant)	

CASE MANAGEMENT PLAN

I. Parties and Representatives

- A. Plaintiff: Linda G. Summers
- B. Defendants: Sally Whitis and Harrison County
- C. Plaintiff's Counsel: Earl C. Mullins, Jr. – ecmir615@aol.com
Richard L. Masters – lawsaver@aol.com
Masters, Mullins & Arrington
1012 South Fourth Street
Louisville, KY 40203

Chris Lane – lanelawoffice@gmail.com
409 Bank Street
New Albany, IN 47150
- D. Defendants' Counsel: Laurie Goetz Kemp – lkemp@k-glaw.com
KIGHTLINGER & GRAY LLP
Bonterra Bldg., Ste. 200
3620 Blackiston Blvd.
New Albany, IN 47150

Counsel shall promptly file a notice with the Clerk if there is any change in this information.

II. Jurisdiction and Statement of Claims

- A. Jurisdiction is not in dispute and is conferred on this Court over the subject matter of this litigation pursuant to 28 U.S.C. § 1331; 28 U.S.C. § 1343 and 42 U.S.C. § 1211.
- B. Plaintiff alleges that Defendants have maintained a policy, practice, custom or usage of discriminating against Plaintiff because of her sincerely held religious beliefs and have committed an unlawful employment practice when they terminated her employment and otherwise discriminated against her with respect to her compensation, terms, conditions or privileges of employment because of her religion in violation of 42 U.S.C. § 2000e-2(a)(1).
- C. Defendants deny the Plaintiff's allegations that they engaged in any activity that was in violation of federal law or that Defendants have in any way discriminated against, harassed or denied any benefit or accommodation to Plaintiff. Moreover, Defendants deny that Plaintiff requested a reasonable accommodation under Title VII. The evidence will establish that Plaintiff's refusal to perform an essential function of the job was a legitimate and non-discriminatory basis for her termination.
- D. Within 14 days after the non-expert discovery deadline, and consistent with the certification provisions of Fed. R. Civ. Proc. 11(b) the party with the burden of proof shall file a statement of the claims or defenses it intends to prove at trial, stating specifically the legal theories upon which the claims or defenses are based.

III. Pretrial Pleadings and Disclosures

- A. The parties shall serve their Fed. R. Civ. P. 26 initial disclosures on or before October 2, 2015.
- B. Plaintiff(s) shall file preliminary witness and exhibit lists on or before November 4, 2015.
- C. Defendant(s) shall file preliminary witness and exhibit lists on or before December 4, 2015.
- D. All motions for leave to amend the pleadings and/or to join additional parties shall be filed on or before November 4, 2015.
- E. Plaintiff(s) shall serve Defendant(s) (but not file with the Court) a statement of special damages, if any, and make a settlement demand, on or before November 4, 2015. Defendant(s) shall serve on the Plaintiff(s) (but not file with the Court) a response thereto within 7 days after receipt of the demand.
- F. Plaintiff(s) shall disclose the name, address, and vita of any expert witness, and shall serve the report required by Fed. R. Civ. P. 26(a)(2) on or before May 4, 2016.

Defendant(s) shall disclose the name, address, and vita of any expert witness, and shall serve the report required by Fed. R. Civ. P. 26(a)(2) on or before June 4, 2016.

- G. If a party intends to use expert testimony in connection with a motion for summary judgment to be filed by that party, such expert disclosures must be served on opposing counsel no later than 90 days prior to the dispositive motion deadline. If such expert disclosures are filed the parties shall confer within 7 days to stipulate to a date for responsive disclosures (if any) and completion of expert discovery necessary for efficient resolution of the anticipated motion for summary judgment. The parties shall make good faith efforts to avoid requesting enlargements of the dispositive motions deadline and related briefing deadlines. Any proposed modifications of the CMP deadlines or briefing schedule must be approved by the court.
- H. Any party who wishes to limit or preclude expert testimony at trial shall file any such objections no later than September 4, 2016. Any party who wishes to preclude expert witness testimony at the summary judgment stage shall file any such objections with their responsive brief within the briefing schedule established by Local Rule 56-1.
- I. All parties shall file and serve their final witness and exhibit lists on or before July 5, 2016. This list should reflect the specific potential witnesses the party may call at trial. It is not sufficient for a party to simply incorporate by reference “any witness listed in discovery” or such general statements. The list of final witnesses shall include a brief synopsis of the expected testimony.
- J. Any party who believes that bifurcation of discovery and/or trial is appropriate with respect to any issue or claim shall notify the Court as soon as practicable.
- K. The parties have discussed preservation and disclosure of electronically stored discovery information, including a timetable for making the materials available to the opposing party, and agree that the parties will not produce such information in its native format, but rather in a format that is most convenient for the parties, *i.e.*, in paper form, unless another format is specifically requested by a party. In the event that a party specifically requests another format, the opposing party reserves any and all rights that it may have to object to the requested discovery, including the requested medium. The parties further agree that inadvertent production or disclosure of any information or of any document(s) containing information that is confidential, privileged, was prepared in anticipation of litigation or for trial, or is otherwise irrelevant and/or immune from discovery shall not constitute a waiver of any such privilege or of any ground for objection to discovery with respect to such information or document(s), the subject matter of the information or document(s), or of either party’s right to object to the use of any such information or document during any subsequent proceeding in this action or elsewhere.
- L. Inadvertent Disclosure of Privileged Documents. To the extent that counsel for a disclosing party receives electronic discovery from its client and the discovery does not contain any privileged communications, counsel for the disclosing party may

forward such electronic discovery to opposing counsel by e-mail without waiving the attorney-client privilege. The parties also agree that if counsel for either party inadvertently disclose information protected by the attorney-client privilege, such disclosure shall not constitute a waiver of the attorney-client privilege. When a party learns that privileged information, either received or produced has been inadvertently disclosed, the party shall notify the other party in writing and the document shall be returned so that the document may be withheld or redacted, as appropriate, and shall be identified in a privilege log. The parties acknowledge that either party may challenge the other party's claim of privilege pursuant to Rule 37 of the Federal Rules of Civil Procedure.

IV. Discovery¹ and Dispositive Motions

- A. Does any party believe that this case may be appropriate for summary judgment or other dispositive motion? If yes, the party(ies) that expect to file such a motion must provide a brief statement of the factual and/or legal basis for such a motion.

The Defendants anticipate seeking summary judgment. This case will be governed by Defendants' explanation of the job duties and requirements for the position in question as well as the basis for the termination. A legal issue will be presented to the Court as to whether an employer must provide an accommodation to an employee based upon a religious belief that result in removal of an essential function of the position and/or creates an undue hardship on the office and community. Moreover, as an employee of a public entity, Plaintiff's religious beliefs did not justify her refusal to perform a required task. The evidence will also show that plaintiff cannot make a prima facie case of religious discrimination or retaliation as she was treated no differently than other individuals and religion was not a motivating factor in the adverse employment action. With these facts applied to the law of the case, summary judgment in favor of the Defendants will be appropriate.

- B. Select the track that best suits this case:

X Track 2: Dispositive motions are expected and shall be filed by June 4, 2016; non-expert witness discovery and discovery relating to liability issues shall be completed by April 4, 2016; expert witness discovery and discovery relating to damages shall be completed by August 4, 2016.

Absent leave of court, and for good cause shown, all issues raised on summary judgment under Fed. R. Civ. P. 56 must be raised by a party in a single motion.

¹The term "completed," as used in Section IV.B, means that counsel must serve their discovery requests in sufficient time to receive responses before this deadline. Counsel may not serve discovery requests within the 30-day period before this deadline unless they seek leave of Court to serve a belated request and show good cause for the same. In such event, the proposed belated discovery request shall be filed with the motion, and the opposing party will receive it with service of the motion but need not respond to the same until such time as the Court grants the motion.

V. Pre-Trial/Settlement Conferences

The parties believe that a settlement conference should be held approximately February 2016

VI. Trial Date

The presumptive trial date is 20 months from the Anchor Date. The parties request a trial date in December, 2016. The trial is by jury and is anticipated to take 3 days.

VII. Referral to Magistrate Judge

A. Case. At this time, all parties do not consent to refer this matter to the currently assigned Magistrate Judge pursuant to 28 U.S.C. 636(b) and Federal Rules of Civil Procedure 73 for all further proceedings including trial.

The Parties do consent to refer all non-dispositive matter to the Magistrate Judge.

B. Motions. The parties may also consent to having the assigned Magistrate Judge rule on motions ordinarily handled by the District Judge, such as motions to dismiss, for summary judgment, or for remand. If all parties consent, they should file a joint stipulation to that effect. Partial consents are subject to the approval of the presiding district judge.

VIII. Required Pre-Trial Preparation

A. TWO WEEKS BEFORE THE FINAL PRETRIAL CONFERENCE, the parties shall:

1. File a list of trial witnesses, by name, who are actually expected to be called to testify at trial. This list may not include any witnesses not on a party's final witness list filed pursuant to section III.I.
2. Number in sequential order all exhibits, including graphs, charts and the like, that will be used during the trial. Provide the Court with a list of these exhibits, including a description of each exhibit and the identifying designation. Make the original exhibits available for inspection by opposing counsel. Stipulations as to the authenticity and admissibility of exhibits are encouraged to the greatest extent possible.
3. Submit all stipulations of facts in writing to the Court. Stipulations are always encouraged so that at trial, counsel can concentrate on relevant contested facts.

4. A party who intends to offer any depositions into evidence during the party's case in chief shall prepare and file with the Court and copy to all opposing parties either:
 - a. brief written summaries of the relevant facts in the depositions that will be offered. (Because such a summary will be used in lieu of the actual deposition testimony to eliminate time reading depositions in a question and answer format, this is strongly encouraged.); or
 - b. if a summary is inappropriate, a document which lists the portions of the deposition(s), including the specific page and line numbers, that will be read, or, in the event of a video-taped deposition, the portions of the deposition that will be played, designated specifically by counter-numbers.
5. Provide all other parties and the Court with any trial briefs and motions in limine, along with all proposed jury instructions, voir dire questions, and areas of inquiry for voir dire (or, if the trial is to the Court, with proposed findings of fact and conclusions of law).
6. Notify the Court and opposing counsel of the anticipated use of any evidence presentation equipment.

B. ONE WEEK BEFORE THE FINAL PRETRIAL CONFERENCE, the parties shall:

1. Notify opposing counsel in writing of any objections to the proposed exhibits. If the parties desire a ruling on the objection prior to trial, a motion should be filed noting the objection and a description and designation of the exhibit, the basis of the objection, and the legal authorities supporting the objection.
2. If a party has an objection to the deposition summary or to a designated portion of a deposition that will be offered at trial, or if a party intends to offer additional portions at trial in response to the opponent's designation, and the parties desire a ruling on the objection prior to trial, the party shall submit the objections and counter summaries or designations to the Court in writing. Any objections shall be made in the same manner as for proposed exhibits. However, in the case of objections to video-taped depositions, the objections shall be brought to the Court's immediate attention to allow adequate time for editing of the deposition prior to trial.
3. File objections to any motions in limine, proposed instructions, and voir dire questions submitted by the opposing parties.

4. Notify the Court and opposing counsel of requests for separation of witnesses at trial.

VIII. Other Matters

None.

Respectfully Submitted,

s/Richard L. Masters (with permission)

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s/Laurie Goetz Kemp

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Attorney for Defendant

Upon approval, this Plan constitutes an Order of the Court. Failure to comply with an Order of the Court may result in sanctions for contempt, or as provided under Rule 16(f), to and including dismissal or default.

Approved and So Ordered.

Date

Judge, U.S. District Court
Southern District of Indiana