

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

PENNY BENTON,	)	
Plaintiff,	)	
	)	CAUSE NO. 1:10-cv-00918-LJM-DML
	)	
vs.	)	
	)	
HAMILTON EAST	)	
PUBLIC LIBRARY,	)	
Defendant.	)	

**CASE MANAGEMENT PLAN**

I. Parties and Representatives

A. Plaintiff: Penny Benton

Defendant: Hamilton East Public Library

B. Counsel for Plaintiff: Joel Samuel Paul  
Ramey & Hailey  
9333 N. Meridian St.  
Suite 105  
Indianapolis, IN 46260  
(317) 582-0000  
(317) 582-0080  
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C. Counsel for Defendant: Jennifer L. Williams  
Church Church Hittle & Antrim  
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Counsel shall promptly file a notice with the Clerk if there is any change in this information.

II. Synopsis of Case

A. Plaintiff's Synopsis:

Plaintiff, a current employee of Defendant, claims that Defendant violated her rights under Title VII of the Civil Rights Act of 1964. Plaintiff alleges she was retaliated against by her former employer, Defendant, on the basis of her previously-filed discrimination charge. Plaintiff also alleges she was discriminated against on the basis of her race from the time she was hired. Plaintiff alleges she was harassed and picked on because of her status as a member of a protected class. Furthermore, Plaintiff alleges she was constantly yelled at behind closed doors by her manager and another employee of Defendant. Plaintiff indicates she told her supervisor that she would going to report the harassment and then sought treatment from a doctor. Plaintiff **seeks** \$100,000 as recovery from Defendant for the alleged retaliation.

B. Defendant's Synopsis:

The allegations in the Complaint, as the Defendant understands them, are based on circumstances that developed as a result of poor job performance and disciplinary issues pertaining to Plaintiff. Plaintiff began her employment with Defendant in January, 2007. Since that time, Plaintiff has received warnings, both written and verbal, about her inappropriate behavior and poor job performance. Plaintiff has also failed to follow Defendant's policies regarding: the employee handbook; in-service training; timely arrivals to, and departures from, work; employee entrance/exit procedures; employee internet usage; and employee identification. The Defendant denies that Plaintiff was subjected to harassment based on her status as a member of a protected class. Plaintiff has been provided opportunities to improve her job performance through Defendant and had recently shown improvement. However, due to further incidents of violating the Defendant's employee policies and procedures, Plaintiff was later discharged from her duties under Defendant's employ.

III. Pretrial Pleadings and Disclosures

- A. The parties shall serve their Fed. R. Civ. P. 26 initial disclosures on or before November 20, 2010.
- B. Plaintiff shall file preliminary witness and exhibit lists on or before December 20, 2010.
- C. Defendant shall file preliminary witness and exhibit lists on or before January 20, 2010.
- D. All motions for leave to amend **the** pleadings and/or to join additional parties shall be filed on or before December 20, 2010.

- E. Plaintiff shall serve Defendant (but not file with the Court) a statement of special damages, if any, and make a settlement demand, on or before December 20, 2010. Defendant shall serve on the Plaintiff (but not file with the Court) a response thereto within 30 days after receipt of the demand.
- F. Plaintiff shall disclose the name, address and vita of all expert witnesses, and shall serve the report required by Fed. R. Civ. P. 26(a)(2)(B) on or before September 20, 2011. However, if Plaintiff uses expert witness testimony at the summary judgment stage, such disclosures must be made no later than 60 days prior to the summary judgment deadline.
- G. Defendant shall disclose the name, address, and vita of all expert witnesses and shall serve the report required by Fed. R. Civ. P. 26(a)(2)(B) within 30 days after Plaintiff serves its expert witness disclosure; or if none, Defendant shall make its expert disclosure on or before October 20, 2011. However, if Defendant uses expert witness testimony at the summary judgment stage, such disclosures must be made no later than 30 days prior to the summary judgment deadline.
- H. Any party who wishes to limit or preclude expert testimony at trial shall file any such objections no later than 60 days before trial. Any party who wishes to preclude expert testimony at the summary judgment stage, shall file any such objections with their respective 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 October 20, 2011.
- 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 not discussed preservation and disclosure of electronically stored discovery information, including a timetable for making the materials available to the opposing party.

#### IV. Discovery<sup>1</sup> and Dispositive Motions

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<sup>1</sup> The 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 but need not respond to the same until such time as the Court grants the motion.

A. The Defendant anticipates dispositive motions will be appropriate for all of the claims for relief in the Plaintiff's Complaint. Plaintiff's Complaint does not meet the criteria for racial discrimination. First, Plaintiff was not harassed based on her status as a member of a protected class. Second, any alleged harassment was not "severe and pervasive." Third, the Defendant appropriately responded to any concerns regarding Plaintiff's disciplinary issues and poor job performance as well as any concerns regarding Plaintiff's perceived harassment.

B. Select the track that best suits this case:

Track 2: Dispositive motions are expected and shall be filed by June 20, 2011; non-expert witness discovery and discovery relating to liability issues shall be completed by April 20, 2011; expert witness discovery and discovery relating to damages shall be completed by October 20, 2011.

V. Pre-Trial/Settlement Conferences

The parties have been ordered to attend an initial pretrial conference on September 28, 2010 and will comply with that order.

VI. Trial Date

The Defendant does not believe it is necessary to set a trial date at this time as they anticipate the case will be decided on dispositive motions. In the event, the case is not decided on dispositive motions, the Defendant requests a trial date in February 2012. The trial is by Court and Defendant anticipates it will take one (1) day. Plaintiff estimates that 3 days will be required for trial.

VII. Referral to Magistrate Judge

At this time, the Plaintiff and Defendant do consent to refer this matter to the Magistrate Judge pursuant to 28 U.S.C. 636(b) and Federal Rule of Civil Procedure 73 for all further proceedings including trial.

VIII. Required Pre-Trial Preparation

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

1. File a list of witnesses who are expected to be called to testify at trial.
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 depositions(s), including the specific page and line numbers, that will be read, or, in the event of a video-taped depositions, 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.

IX. Other Matters

At this time, the parties are not aware of other matters that need to be addressed. The Defendant does not believe this case can be settled.

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s/ Jennifer L. Williams  
Jennifer L. Williams, #25365-29-A  
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X     PARTIES APPEARED BY COUNSEL ON SEPTEMBER 28, 2010, FOR AN INITIAL PRETRIAL CONFERENCE.

           APPROVED AS SUBMITTED,

    X     APPROVED AS AMENDED.

           APPROVED AS AMENDED PER SEPARATE ORDER.

           APPROVED, BUT ALL OF THE FOREGOING DEADLINES ARE SHORTENED/LENGTHENED BY \_\_\_\_\_ MONTHS.

           APPROVED, BUT THE DEADLINES SET IN SECTION(S) \_\_\_\_\_ OF THE PLAN IS/ARE SHORTENED/LENGTHENED BY \_\_\_\_\_ MONTHS.

           THIS MATTER IS SET FOR TRIAL BY \_\_\_\_\_ ON \_\_\_\_\_ . FINAL PRETRIAL CONFERENCE IS SCHEDULED FOR \_\_\_\_\_ AT \_\_\_\_\_ .M., ROOM \_\_\_\_\_ .

           A SETTLEMENT/STATUS CONFERENCE IS SET IN THIS CASE FOR \_\_\_\_\_ AT \_\_\_\_\_ .M. COUNSEL SHALL APPEAR:

\_\_\_\_\_ IN PERSON IN ROOM \_\_\_\_\_ ; OR

\_\_\_\_\_ BY TELEPHONE, WITH COUNSEL FOR INITIATING THE CALL TO ALL OTHER PARTIES AND ADDING THE COURT JUDGE AT ( \_\_\_\_ ) \_\_\_\_\_ ; OR

\_\_\_\_\_ BY TELEPHONE, WITH COUNSEL CALLING THE JUDGE'S STAFF AT ( \_\_\_\_ ) \_\_\_\_\_ ; OR

    X     DISPOSITIVE MOTIONS SHALL BE FILED BY JUNE 20, 2011.

    X     NON-EXPERT WITNESS AND LIABILITY DISCOVERY SHALL BE COMPLETED BY APRIL 20, 2011.

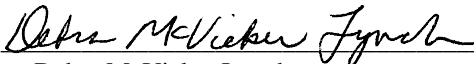
If the required conference under LR 37.1 does not resolve discovery issues that may arise, **and if the dispute does not involve a claim of privilege**, the parties are ordered *jointly* to request a phone status conference before filing any motion to compel or for protective order. **If the dispute has arisen because a party has failed to timely respond to discovery, the party that served the discovery may proceed with a motion to compel without seeking a conference. Any contacts with the court to request a discovery conference must be made jointly by counsel, absent compelling circumstances.**

When filing a non-dispositive motion, the movant shall contact counsel for the opposing party and solicit opposing counsel's agreement to the motion. The movant shall indicate opposing counsel's consent or objection in the motion.

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.**

09/28/2010  
Date

  
Debra McVicker Lynch  
United States Magistrate Judge  
Southern District of Indiana

Distribution:

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