

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

LAURA J. LAMBERT,

Plaintiff,

v.

**HUSSEY-MAYFIELD MEMORIAL
PUBLIC LIBRARY,**

Defendant.

Cause No. 1:10-cv-0919-JMS-TAB

CASE MANAGEMENT PLAN

I. Parties and Representatives

A. Plaintiff, Laura J. Lambert
Defendant, Hussey-Mayfield Memorial Public Library

B. Plaintiff's Counsel: Richard McMinn (#13715-49)
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II. Synopsis of Case

A. Plaintiff's Synopsis: Plaintiff brings this action against Defendant for violations of the American with Disabilities Act and Title VII of the Civil Rights Act of 1964. Plaintiff is a United States citizen who resides within the geographic boundaries of the Southern District of Indiana. Defendant is public library located within the confines of the Southern District of Indiana. The Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. 1331 and 1343, 42 U.S.C. 12117, and 42 U.S.C. 2000e-5(f)(3). Neither jurisdiction, nor venue, are disputed. Lambert satisfied her obligations to exhaust her administrative remedies and timely brings this action.

Plaintiff, female, started working for Defendant on or about October 7, 1997. Plaintiff is a qualified individual with a disability and/or has a record of a disability and/or was regarded as disabled. Defendant had knowledge of her disability. Her medical condition substantially limits various major life activities. At all times, Plaintiff's work performance met or exceeded Defendant's legitimate expectations. On or about September 2008, Lambert suffered a injury which exacerbated her disability. Defendant had knowledge of the injury. From about October 6, 2008, to about November 18, 2008, Plaintiff was on approved leave as a result of her disability. On or about November 6, 2008, Plaintiff presented Defendant with her work restrictions and requested a reasonable accommodation that would allow her to perform the essential functions of her job and attempted to engage Defendant in the interactive process. Defendant did not engage in the interactive process or reasonably accommodate Lambert. Lambert could have performed her job with a reasonable accommodation. On November 18, 2008, Defendant terminated Plaintiff. Similarly-situated employees who did not have a disability more favorably in the terms, conditions, and privileges of employment. Defendant previously provided accommodations similar to the accommodations requested by Plaintiff to other employees. Defendant also extended more favorable employment benefits to male employees. In particular, Mr. Rick Dueschle was given enhanced retirements as a condition of his employment. Defendant discriminated against Plaintiff and treated similarly-situated males employees more favorably in the terms, conditions, and privileges of their employment than Plaintiff. Plaintiff was terminated due to her disability and/or record of disability and/or perception of having a disability, and/or in retaliation for requesting a reasonable accommodation and/or requesting Defendant engage in the interactive process. All reasons proffered by Defendant for adverse actions taken against Plaintiff are pretextual. Defendant acted willfully, intentionally and with reckless indifference for Plaintiff's rights. Plaintiff suffered harm as a result of Defendant's violations of law.

B. Defendant's Synopsis: Plaintiff worked as Circulation Assistant for the Hussey-Mayfield Memorial Public Library (the "Library"). She worked 25 hours total spread over four days of the week. She shared the responsibility for weekend work with the other Circulation

Assistants. Among other tasks, her job required her to assist customers at the Circulation Desk; inspect and reshelve books and other library materials using heavy carts to transport books; help to keep shelves in proper order; place, fill, and lift holds on library materials; lift and bend to retrieve books and other library materials from three different types of drop boxes; participate in activities related to the preparation and delivery of overdue notices; resolve customer account issues; and recruit, train and schedule volunteers. When she worked weekends, she needed to perform the entire job, including the tasks that required significant lifting and bending, by herself. Plaintiff did not give the Library notice of a work-related injury either in September 2008, or at any other time. Plaintiff left work an hour early on October 1, 2008, complaining that she did not feel well. On October 6, 2008, she contacted the Library and advised that she had a bulging disc and needed an appendectomy. Between that date and November 18, 2008, the parties engaged in extensive discussions about when, and under what conditions, Plaintiff might be able to return to work. On November 7, 2008, Plaintiff provided medical restrictions of no lifting more than 10 lbs, no bending, and no twisting “until medically cleared.” These restrictions made it impossible for her to perform all the essential functions of the Circulation Assistant job, with or without reasonable accommodation, and there were no other jobs available for her. Accordingly, she could not return to work. On November 13, 2008, Plaintiff advised that she hoped to be able to return to work the next week without restrictions. On November 18, 2008, she advised, without providing medical documentation to support her statement, that she and her physician were “shooting for a December 1st return to work.” At this point in time, the Library was thinly staffed in the Circulation Department. Plaintiff had no additional accrued time off. The Library simply could not have Plaintiff continue on an indefinite leave of absence, and she could not perform part all essential functions of her job with or without reasonable accommodation. Accordingly, Martha Catt, the Library Director, decided to terminate Plaintiff’s employment. Contrary to Plaintiff’s suggestions, the Library had not previously been asked to make reasonable accommodations for any other Circulation Assistants with issues similar to Plaintiff’s. Finally, Rick Dueschle and Plaintiff were not similarly situated persons, and, in any event, the Library did not provide Mr. Dueschle with “enhanced” retirement benefits.

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(s) shall file preliminary witness and exhibit lists on or before December 20, 2010.
- C. Defendant(s) shall file preliminary witness and exhibit lists on or before January 20, 2011.
- 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(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 December 20, 2010. Defendant(s) shall serve on the Plaintiff(s) (but not file with the Court) a response thereto within 30 days after receipt of the demand.

F. Plaintiff(s) 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 _____ August 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(s) 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(s) serves its expert witness disclosure; or if none, Defendant(s) shall make its expert disclosure on or before September 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 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 September 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 discussed preservation and disclosure of electronically stored discovery information, including a timetable for making the materials available to the opposing party. At this time, the parties do not anticipate that ESI will play a significant role in the litigation. No claims of privilege shall be waived by inadvertent disclosure of materials. A party who receives electronic discovery and knows or reasonably should know that any part of it was inadvertently sent shall promptly notify the sender in order to permit the sender to take protective measures, and shall comply with sender's request to return the materials if applicable.

IV. Discovery¹ and Dispositive Motions

Due to the time and expense involved in conducting expert witness depositions and other discovery, as well as preparing and resolving dispositive motions, the Court requires counsel to use the CMP as an opportunity to seriously explore whether this case is appropriate for such motions (including specifically motions for summary judgment), whether expert witnesses will be needed, and how long discovery should continue. To this end, counsel must select the track set forth below that they believe best suits this case. If the parties are unable to agree on a track, the parties must: (1) state this fact in the CMP where indicated below; (2) indicate which track each counsel believes is most appropriate; and (3) provide a brief statement supporting the reasons for the track each counsel believes is most appropriate. If the parties are unable to agree on a track, the Court will pick the track it finds most appropriate, based upon the contents of the CMP or, if necessary, after receiving additional input at an initial pretrial conference.

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 Library believes that this case may be appropriate for summary judgment. All events in this case arose before the January 1, 2009, effective date of the amendments to the Americans With Disabilities Act. The Plaintiff may not have been disabled within the meaning of the Act. The Library certainly did not regard her as disabled. Even if she was disabled, the Library engaged in the interactive process with Plaintiff, but finally determined based on the information available that it could not accommodate her. Certainly, the Library was not required to leave Plaintiff on an indefinite leave of absence as an accommodation. Plaintiff's Title VII allegations are completely without merit. The Library did not treat any similarly-situated male person better than Plaintiff.

B. Select the track that best suits this case:

 x 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

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.

by May 20, 2011; expert witness discovery and discovery relating to damages shall be completed by November 20, 2011.

V. Pre-Trial/Settlement Conferences

The parties will contact the Court if they conclude that a settlement conference may be productive a month or more before the summary judgment deadline.

VI. Trial Date

The presumptive trial date is 18 months from the Anchor Date. The parties request a trial date in January 2012. The trial is by Jury take three (3) days. Counsel should indicate here the reasons that a shorter or longer track is appropriate. While all dates herein must be initially scheduled to match the presumptive trial date, if the Court agrees that a different track is appropriate, the case management order approving the CMP plan will indicate the number of months by which all or certain deadlines will be extended to match the track approved by the Court.

VII. Referral to Magistrate Judge

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

VIII. Required Pre-Trial Preparation

A. TWO WEEKS BEFORE THE 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 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.

IX. Other Matters

None.

**Attorney for Plaintiff,
Laura J. Lambert**

**Attorneys for Defendant,
Hussey-Mayfield Memorial
Public Library**

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_____ PARTIES APPEARED IN PERSON/BY COUNSEL ON FOR A PRETRIAL/STATUS CONFERENCE.

_____ APPROVED AS SUBMITTED.

_____ 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

_____ DISPOSITIVE MOTIONS SHALL BE FILED NO LATER THAN

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

U. S. District Court
Southern District of Indiana

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