

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
NO: 7:12-CV-20-FL

SHERRYL LYNN JACOBS,)	
)	
Plaintiff,)	
)	
v.)	
)	
ROBESON COUNTY PUBLIC LIBRARY,)	
BOARD OF DIRECTORY FOR ROBESON)	MEMORANDUM IN
COUNTY PUBLIC LIBRARY, ROBERT F.)	OPPOSITION TO
FISHER, HORACE STACY, GAYLE MCLEAN,)	PLAINIFF'S MOTION TO
and TINA MELLEN STEPP THOMAS)	QUASH/SUPPRESS
)	
Defendants.)	
)	

Defendants respond to Plaintiff's Motion to Quash/Suppress as follows:

Plaintiff's Motion Is Premature.

It is not clear if Plaintiff's Motion is a Discovery Motion or a Non-Discovery Motion. We assume it is a non-discovery motion, since defendant's counsel was not contacted in advance of the filing as required by Local Rule 7.1 (c) and the required certification is not in the motion. Plaintiff cites no rule upon which she makes her Motion and it appears more like a pre-trial motion in *limine* that would be more appropriate at trial or at least once discovery has been completed so that the Court would be able to consider whatever offensive or impermissible testimony may be proffered.

Discovery has just begun and no witnesses have been deposed. At this time, Defendants have offered no testimony, but merely have completed the Rule 26 initial

disclosures identifying persons who may have knowledge regarding the matters in dispute. Since Plaintiff has not yet made her initial disclosures under Rule 26, as required by the Court's scheduling order, Defendants are not aware of what evidence, if any, the Plaintiff may offer in this case and what evidence or witnesses they will need to respond to her evidence. The Defendants have simply complied with their obligation under Rule 26 by indentifying any and all persons who might have knowledge of this matter. It would be premature to exclude testimony of any witness until such time as it is known what such witness may testify to. Plaintiff has adequate remedies, other than a premature motion to quash, to learn what, if anything, persons identified in Defendants' Rule 26 Initial Disclosures may say by taking their deposition, or by submitting interrogatories or requests for production of documents. Since no testimony has been offered there is nothing at this time to quash.

Plaintiff Can't Have It Both Ways

Plaintiff seeks to exclude the testimony of Horace Stacey, Gail McLean, Larry McGougan and Elizabeth Townsend by alleging they have no personal knowledge about her, yet she has named all four as defendants in this case and is seeking substantial damages from each of them. If they have so little personal knowledge about the matters in dispute they cannot have done anything that merits making them defendants and they should be dismissed from this case if she does not want to hear from them. I am unaware of any legal precedent that would preclude a civil defendant from testifying in his own defense.

**Plaintiff's Unverified Motion Should Not Be The Basis For Determining The Scope
Or Relevance Of A Witness' Testimony**

Plaintiff's Motion, just as all of the pleadings she has filed in this case, is unverified and is not supported by sworn affidavits. It should not be considered as evidence as to how much contact she has had with other parties or witnesses in the case nor as to the scope, relevancy or knowledge of any testimony they may later give in this case. Until they are deposed, sign affidavits or answer interrogatories there is at this time no evidence of record of what these witnesses may say for this Court to consider excluding. The Plaintiff's unverified motion does not even identify any "inflammatory evidence these witnesses may offer. The Court cannot weigh the relevance or prejudice of evidence that is not before it.

**Witnesses Without Personal Knowledge of Plaintiff May Have Evidence
Relevant To This Case**

Counsel for the Defendants is cognizant of the Federal Rules of Evidence and will not tender witnesses to testify about matters about which they have no personal knowledge. However, witnesses who have not personally met Plaintiff may have knowledge of matters relevant to this case. For example a board member may have never met the Plaintiff but may possess knowledge of the libraries personnel policies and procedures and how the board or director takes action that could be relevant to this case. A maintenance person may not know Plaintiff but may have knowledge of the physical aspects of Plaintiff's work space or furniture. Similarly an expert may have helpful

testimony based upon a review of discovery, depositions and medical records yet they have never met the Plaintiff.

Conclusion

For the reasons set forth above the Defendants request that the Court deny Plaintiff's Motion, or alternatively that the Court reserve ruling on the admissibility of evidence until discovery is completed and until specific evidence is offered.

This the 11th of June, 2012

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon Plaintiff by depositing a copy thereof in the United States mail, first-class, postage prepaid, addressed as follows:

Ms. Sherryl Lynn Jacobs
Post Office Box 175
Orrum, North Carolina 28369

This the 11 day of June, 2012

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