

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CARL CAVALIER	*	CIVIL ACTION
	*	
VERSUS	*	DOCKET NO. 21-656
	*	
STATE OF LOUISIANA: DEPT. OF	*	JUDGE JOHN W. DEGRAVELLES
PUBLIC SAFETY & CORRECTIONS:	*	
PUBLIC SAFETY SERVICES; OFFICE	*	MAGISTRATE RICHARD L. BOURGEOIS, JR.
OF STATE POLICE	*	

STATUS REPORT

Carl Cavalier (“Plaintiff”) and the Louisiana Department of Public Safety & Corrections (Office of State Police) (“DPSC/LSP”) provide the following Status Report in the above action:

A. JURISDICTION:

This court has jurisdiction of this cause under 28 U.S.C. §§ 1331 and 1367 affording supplemental jurisdiction over Plaintiff’s claims against defendant DPSC. Plaintiff brings claims against defendant Davis under 42 U.S.C. §1983. Plaintiff brings claims against defendant DPSC under Louisiana law pursuant to La. R.S. 23:967. Although plaintiff alleges he timely filed Charge of Discrimination regarding his claims for Title VII retaliation against defendant DPSC, he has not yet received his Notice of Right to Sue and, accordingly, reserves his right to pursue that claim at a later time.

B. BRIEF EXPLANATION OF THE CASE:

1. Plaintiff claims:

Mr. Cavalier contends he is a whistle-blower and, as a result, was harassed, punished, suspended, and as of this writing, now terminated from his employment. Mr. Cavalier contends he reported, opposed, and complained about, including writing a book, unlawful discrimination under Louisiana law in the workplace, illegal use of force, and cover up of unlawful

activity, including as it relates to the death of Ronald Greene. Mr. Cavalier also exercised his right of 1st Amendment speech by speaking to the media and speaking critically about these matters of prominent public concern. He contends as a result of his protected activities, he was subjected to 1st Amendment retaliation by defendant Davis and for which he seeks relief against defendant Davis under 42 U.S.C. §1983. He contends he was subjected to unlawful reprisal, in violation of La. R.S. 23:967, by his employer, DPSC for which he sues defendant DPSC herein.

Mr. Cavalier seeks compensatory damages, lost wages and benefits, attorney fees as to defendant Davis under 42 U.S.C. §1988 and as to defendant DPSC under La. R.S. 23:967, punitive damages as to defendant Davis pursuant to §1983, all costs of these proceedings, legal interest thereon from the date of demand until paid, and all such other relief to which he is entitled at law or in equity.

2. Defendant claims:

DPSC/LSP maintains that there were legitimate, non-discriminatory reasons for Cavalier's release from employment and specifically denies that Plaintiff was subjected to adverse employment action due to his race or in retaliation for "whistleblower" activities. Furthermore, all disciplinary actions were warranted due to the Plaintiff's violation of DPSC/LSP policy and procedures.

C. PENDING MOTIONS:

A Rule 12(b) Motion to Dismiss Plaintiff's Claims against DPSC/LSP [Rec. Doc. 8] was filed on December 30, 2021 on grounds of subject-matter jurisdiction, the sufficiency of process and/or service of process, personal jurisdiction and failure to state a claim.

D. ISSUES:

The principal legal issues involved are:

1. Whether Plaintiff has effected proper service of process (Plaintiff has now served Louisiana Risk Management and the Louisiana Attorney General);
2. Whether Plaintiff has alleged a plausible 28 U.S.C. § 1981 claim (Plaintiff did not make a 1981 claim);
3. Whether Plaintiff has alleged a plausible 28 U.S.C. § 1983 First Amendment retaliation claim; and
4. Whether Plaintiff has alleged a plausible LSA-R.S. 23:967 whistleblower claim.
5. Whether defendant DPSC is liable for reprisal in violation of La. R.S. 23:967;
6. Whether defendant Davis is liable for 1st Amendment retaliation actionable through 42 U.S.C. §1983;
7. Whether plaintiff is entitled to damages, and the amount thereof.

E. DAMAGES:

Separately, for each party who claims damages or an offset, set forth the computation of damages or the offset:

1. Plaintiff's calculation of damages:

Plaintiff contends he has sustained compensatory losses, the amount of which is left to the sound discretion of the trier of fact. Plaintiff contends he has sustained lost wages and benefits and, as of this writing, expects to be formally terminated from employment as of January 10, 2021. Hence, plaintiff contends his lost wages will be calculated based on his ending pay at DPSC offset against any wages/benefits he may earn in the future. Plaintiff seeks attorney fees which continue to accrue, as well as all costs of these proceedings, and legal interest from the date of demand until paid. Plaintiffs seek punitive damages as to defendant Davis pursuant to §1983 to be determined by the trier of fact.

2. Defendant's calculation of damages:

DPSC/LSP maintains that Plaintiff sustained no damages. If DPSC/LSP is successful in its assertion, it may be entitled to attorney's fees and costs associated with the defense of this matter pursuant to 42 U.S.C. §1988. These fees and costs have not yet been incurred and therefore, are undetermined.

It is anticipated that DPSC/LSP will retain an accounting and/or economic expert to assist in the calculation on damages as the case proceeds, but it is too early for DPSC/LSPs to calculate Cavalier's damages (if any) given that no discovery has been conducted yet.

F. SERVICE:

Identify any unresolved issues as to waiver or service of process, personal jurisdiction, or venue:

Under FED.R.CIV.P. 4(j)(2) and (m), Plaintiff was required to effect service on DPSC/LSP within ninety days by delivering a copy of the lawsuit and citation to DPSC's/LSP's chief executive officer or through service in accordance with state law. To the extent that Plaintiff did not timely request and effect service on the Secretary of DPSC and the Office of Risk Management and the Louisiana Attorney General, the service requirements of FED.R.CIV.P. 4(j)(2) and (m)¹ have not been satisfied.²

¹ Stating that "[a] state, a municipal corporation, or any other state-created governmental organization that is subject to suit must be served by: (B) serving a copy of each in the manner prescribed by that state's law for serving a summons or like process on such a defendant." FED.R.CIV.P. 4(j)(2)(B).

² LSA-R.S. 39:1538(D) provides that in actions brought against the state or any of its agencies to recover damages in tort for money damages against the state or its agencies for injury caused by the negligent or wrongful act or omission of any employee of the agency while acting within the scope of his employment:

... process shall be served upon the head of the department concerned, the office of risk management, and the attorney general, as well as any others required by LSA-R.S. 13:5107.

Proper citation is the foundation of all actions, and knowledge of the legal action and/or receipt of the petition fails to satisfy the requirement of citation and service under Louisiana law.³ If Plaintiff failed to timely serve DPSC/LSP, this Court lacks personal jurisdiction over it:

If there is no valid service of process, proceedings against a party are void because a court cannot exercise personal jurisdiction over a defendant unless he or she was properly served.⁴

Plaintiff timely and properly served Attorney General Jeff Landry on December 28, 2021, and timely and properly served the Office of Risk Management on December 28, 2021. There are, accordingly, no unresolved issues of service. The Return of Service for the Summonses are filed of record. Plaintiff further notes this matter was originally filed in State Court. To the extent defendants contend Fed.R.Civ.P. Rule 4 applies, Rule 4 applies from the date of removal and not the original date of filing in State Court.

G. DISCOVERY:

1. Initial Disclosures:

A. Have the initial disclosures required under FRCP 26(a)(1) been completed?

FED.R.CIV.P. 4(m) provides:

If a defendant is not served within 90 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A).

³ See *Naquin v. Titan Indemnity Company*, 2000-1585 (La. 2/21/01), 779 So.2d 704, 710 (recognizing that “it is well-accepted that even a defendant’s actual knowledge of a legal action cannot supply the want of citation because proper citation is the foundation of all actions . . .” and holding that “[t]he argument that the defendants’ knowledge of the plaintiff’s suit can somehow fill the role of service of citation lacks merit.”) (citations omitted).

⁴ See *Carmouche v. Garber*, No. 6:19-CV-00023, 2020 WL 733236, at *1 (W.D. La. Feb. 12, 2020).

YES NO

In accordance with Local Rule 26(b), the parties shall provide their initial disclosures to the opposing party no later than 7 days before the date of the scheduling conference, unless a party objects to initial disclosures during the FED.R.CIV.P. 26(f) conference and states the objection below.

B. Do any parties object to initial disclosures?

DPSC/LSP does not object to initial disclosures.

YES NO

For any party who answered yes, please explain your reasons for objecting.

2. Briefly describe any discovery that has been completed or is in progress:

By plaintiff(s):

Plaintiff anticipates serving written discovery shortly and thereafter, depositions.

By defendant(s):

No discovery has been served to date.

3. Please describe any protective orders or other limitations on discovery that may be required/sought during the course of discovery. (For example: are there any confidential business records or medical records that will be sought? Will information that is otherwise privileged be at issue?)

DPSC/LSP contends that discovery in this case may include evidence related to criminal investigations or prosecutions of third parties and highly publicized and politicized incidents involving other DPSC/LSP employees. DPSC/LSP may seek protective, gag and/or confidentiality orders as is necessary and/or appropriate.

DPSC/LSP proposes that the parties enter into a stipulated confidentiality agreement and protective order which would require that all information produced

in accordance with the agreement/order to be kept confidential and used only for purposes of this litigation. Any such order would further preclude disclosure to anyone except named parties to this litigation, the parties' counsel of record and experts retained in connection with this litigation. However, all parties would reserve the right under the agreement/order to challenge the "confidential" designation attributed by any party to a given document.

In advance of the scheduling conference, counsel for the parties have agreed to consider and explore the prospects for use of a mutually agreeable agreement/order and will be prepared to discuss the issue at the upcoming scheduling conference.

Plaintiff will object to any proposed "gag" order especially given that the likely documents to be used at trial are public records and the matters involved are public activities involving public officials. Plaintiff may seek a protective order as to dissemination of the record of his treating health care providers, his social security number, and joint tax filings/earnings.

4. Discovery from experts:

Identify the subject matter(s) as to which expert testimony will be offered:

By plaintiff(s):

Plaintiff anticipates offering testimony from his treating health care providers and may also specifically retain an expert in police brutality/use of force.

By defendant(s):

None anticipated at this time, but it is possible that experts will be retained in the following areas of specialty/expertise: (1) accounting and/or economics; and/or (2) medical treatment, diagnosis and future medical needs of Plaintiff.

H. PROPOSED SCHEDULING ORDER:

1. If the parties propose an alternative timeframe for exchanging initial disclosures, please provide that proposed deadline: February 1, 2022
2. Recommended deadlines to join other parties or to amend the pleadings: February 15, 2022
3. Filing all discovery motions and completing all discovery except experts: November 30, 2022
4. Disclosure of identities and resumés of expert witnesses (if appropriate, you may suggest different dates for disclosure of experts in different subject matters):
Plaintiff(s): November 1, 2022
Defendant(s): December 1, 2022
5. Exchange of expert reports:
Plaintiff(s): November 15, 2022
Defendant(s): December 15, 2022
6. Completion of discovery from experts: January 15, 2023
7. Filing dispositive motions and Daubert motions: January 15, 2023
8. All remaining deadlines and the pre-trial conference and trial date will be included in the initial scheduling order. The deadlines will be determined based on the presiding judge's schedule, within the following general parameters.⁵ The parties should not provide any proposed dates for these remaining deadlines.

⁵ The date ranges provided for the new deadlines, pre-trial conference, and trial date are a general guideline only. The actual dates may vary depending on the complexity of a particular case. All requests for subsequent changes to the deadlines set in the scheduling order under number 7 must be by motion directed to the presiding judge.

- a. Deadline to file pre-trial order⁶ (approximately 16 weeks after dispositive motion deadline).
 - b. Deadline to file motions in limine (approximately 20-22 weeks after dispositive motion deadline).
 - c. Deadline to file an affidavit of settlement efforts (approximately 22-24 weeks after dispositive motion deadline).
 - d. Deadline to submit joint jury instructions, voir dire, verdict forms, and trial briefs to the presiding judge (approximately 25-27 weeks after dispositive motion deadline).
 - e. Pre-trial conference date (approximately 18-20 weeks after dispositive motion deadline).
 - f. Trial date (approximately 27-29 weeks after dispositive motion deadline).
9. If the general outline of proposed deadlines does not fit the circumstances of your particular case, please provide a proposed joint schedule of deadlines which is more appropriate for your case.

I. TRIAL:

1. Has a demand for trial by jury been made?

YES NO

2. Estimate the number of days that trial will require: three (3) – four (4) days

J. OTHER MATTERS:

Are there any specific problems the parties wish to address at the scheduling conference?

⁶ In cases assigned to United States District Judge John W. deGravelles, prior to the filing of the pretrial order, the parties will exchange or make available for inspection all exhibits which the parties will or may introduce at trial.

YES NO

1. If the answer is yes, please explain:
2. If the answer is no, do the parties want the court to cancel the scheduling conference and to enter a scheduling order based on the deadlines set out in this report?

CHECK "NO" IF YOU HAVE NOT SUBMITTED JOINT PROPOSED DEADLINES.

YES NO

K. SETTLEMENT:

1. **Please set forth what efforts, if any, the parties have made to settle this case to date.**

None.

2. **Do the parties wish to have a settlement conference:**

YES NO

If your answer is yes, at what stage of litigation would a settlement conference be most beneficial?

By plaintiff: upon exchange of written discovery.

By defendants: It would be most beneficial after discovery is concluded and any/all expert reports have been exchanged.

L. CONSENT TO JURISDICTION BY A MAGISTRATE JUDGE:

You have the right to waive your right to proceed before a United States District Judge and may instead consent to proceed before a United States Magistrate Judge. Indicate whether, at this time, all parties will agree, pursuant to 28 U.S.C. § 636(c), to have a Magistrate

Judge handle all the remaining pretrial aspects of this case and preside over a jury or bench trial, with appeal lying to the United States Court of Appeals for the Fifth Circuit.

All parties agree to jurisdiction by a Magistrate Judge of this court:

YES NO

If your response was “yes” to the preceding question, all attorneys and unrepresented parties should sign the attached form to indicate your consent.

Report dated: 1/13/22

Respectfully submitted,

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Respectfully Submitted,
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