UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
G E N E R A L O R D E R 12-0028

Order Finding Probable Merit on Claim of Grand Juror Colleen F. Chestnutt against Cascino Vaughan Law Offices, Ltd. of a Violation of 28 U.S.C. § 1875 and Appointment of Counsel

FOR THE PURPOSE OF addressing grand juror Colleen F. Chestnutt's claim to this court that she was discriminated against by her employer, Cascino Vaughan Law Offices, Ltd., because of her service as a grand juror;

IT IS HEREBY ORDERED, for the reasons set forth in the accompanying Memorandum Opinion, that the court finds probable merit to grand juror Colleen F. Chestnutt's claim of discrimination by Cascino Vaughan Law Offices, Ltd. by reason of Ms. Chestnutt's grand jury service in violation of 28 U.S.C. § 1875(a) and counsel is appointed pursuant to 28 U.S.C. § 1875(d)(1) to represent grand juror Colleen F. Chestnutt in any action in the district court necessary to the resolution of such claim. The filing fee of any such action is ordered waived.

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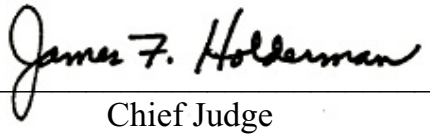
FOR THE COURT



Chief Judge

Dated at Chicago, Illinois this 2d day of November, 2012.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE A MEMBER OF THE AUGUST 2012 GRAND JURY: COLLEEN F. CHESTNUTT	General Order 12-0028

MEMORANDUM OPINION ACCOMPANYING GENERAL ORDER

JAMES F. HOLDERMAN, Chief Judge:

On September 21, 2012, Colleen F. Chestnutt, a member of August 2012 Grand Jury, contacted my chambers and told a member of my staff that she believed that her employer Cascino Vaughan Law Offices, Ltd. ("Cascino Vaughan"), had unfairly and unlawfully terminated her because of her jury service. After Ms. Chestnutt met with me and my staff on September 26, 2012, I informed Cascino Vaughan in a letter sent September 27, 2012, of Ms. Chestnutt's claim and asked Cascino Vaughan to provide a response to the court by October 10, 2012. Cascino Vaughan responded by a letter dated October 9, 2012. I sent Cascino Vaughan's response to Ms. Chestnutt by letter of October 10, 2012, and requested that Ms. Chestnutt reply by October 31, 2012, if she wished to pursue her claim against Cascino Vaughan. Ms. Chestnutt replied in a letter of October 31, 2012.

Having evaluated all of the information provided by Ms. Chestnutt and Cascino Vaughan, I find, for the reasons set forth below, that there is probable merit to Ms. Chestnutt's claim, and I hereby appoint counsel to represent Ms. Chestnutt in accordance with 28 U.S.C. § 1875(d)(1).

FACTUAL BACKGROUND

Ms. Chestnutt reported to the court that she was employed as a Legal Assistant beginning on

May 3, 2012, at the Cascino Vaughan Law Offices on 220 S. Ashland in Chicago. The firm chiefly performs plaintiff-side asbestos litigation. Ms. Chestnutt reported to Mr. Allen Vaughan, a partner at the firm. Ms. Chestnutt's duties included acting as the medical intake coordinator who interviewed and gathered information about clients who were sick from asbestos exposure.

Ms. Chestnutt was summoned to appear on August 10, 2012, for grand jury service, and was picked for jury service on that date. On August 13, 2012, Ms. Chestnutt reported to her employer that she had been chosen for jury service, and that she would miss work approximately once a week every Tuesday for the next eighteen months. Ms. Chestnutt stated that after Mr. Vaughan was informed of Ms. Chestnutt's grand jury service, Mr. Vaughan told Ms. Chestnutt, among other statements, that "this is not going to fly." When Ms. Chestnutt asked him what he meant, he said that eighteen months was a long commitment, that her grand jury service would interrupt her work, and that she should do whatever it takes to get out of it. Ms. Chestnutt again asked what he meant. Mr. Vaughan said that he meant she should do whatever it took to get out of grand jury service, and that she should lie if she had to. Ms. Chestnutt replied that she was not going to lie to the federal government.

Cascino Vaughan's response includes an affidavit from Mr. Vaughan in which he states that he spoke with Ms. Chestnutt about grand jury service three times. Mr. Vaughan does not explicitly deny that he stated to Mr. Chestnutt that "[t]his is not going to fly," or that he told Ms. Chestnutt to lie to get out of jury service. He does, however, state that each time he spoke to Ms. Chestnutt about her grand jury service he "was supportive of the legal duty as a US citizen to serve on grand juries."

Ms. Chestnutt reported for grand jury service on August 14, August 21, August 28, September 4, and September 11. Ms. Chestnutt stated that during this period, despite her efforts to do extra work while on jury service, her work environment became increasingly oppressive until she

was terminated on September 17, 2012.

According to Ms. Chestnutt, the events leading to her termination began on September 17, 2012, at about 3:30 pm, when Ms. Joan Gutekanst, a human resources officer at Cascino Vaughan, asked Ms. Chestnutt to come with her to a meeting in the office of Mr. Michael Cascino. Ms. Gutekanst remarked to Ms. Chestnutt on the way that "this isn't going to be good for you." Mr. Cascino and Ms. Gutekanst were both present for this meeting with Ms. Chestnutt. At the meeting, Mr. Cascino told Ms. Chestnutt that he was sorry to see her go, but that because of "budget constraints" they felt like that they had to terminate her. After further conversation, Mr. Cascino gave Ms. Chestnutt a recommendation letter Mr. Vaughan had prepared for her (a copy of which Ms. Chestnutt submitted to the court), and gave her her last paycheck. Ms. Gutekanst then walked Ms. Chestnutt back to her office. On the way, Ms. Gutekanst told Ms. Chestnutt that she (Ms. Gutekanst) had told Mr. Vaughan that he was making a mistake by firing Ms. Chestnutt. Ms. Gutekanst said that Mr. Vaughan had replied by saying that "Tuesdays are getting in the way" and that they had to do it. Ms. Gutekanst then again said she thought it was a mistake to fire Ms. Chestnutt, but that the decision was up to Mr. Vaughan.

Cascino Vaughan's response, again, tells a different story. Cascino Vaughan submitted an affidavit from Ms. Gutekanst, who stated that "Ms. Chestnutt's dismissal had nothing to do with her grand jury service and I expressed no such thing to Ms. Chestnutt." Ms. Gutekanst confirms that she was present at the meeting at which Mr. Cascino fired Ms. Chestnutt, but states that Mr. Cascino did not state that he was firing Ms. Chestnutt because of "budgetary constraints," and indeed did not state any reason for firing Ms. Chestnutt. Instead, Ms. Gutekanst explains that Ms. Chestnutt's termination was based on a failure to perform her duties. According to Ms. Gutekanst, a crucial part

of Ms. Chestnutt's duties was to input the data of potential clients into a database called Paradox. Ms. Chestnutt failed to learn how to use Paradox adequately, despite the availability of additional training, failed to produce status reports for the partners about potential clients as requested, took an excessively long time to complete client and witness searches on Lexis, and failed to create a proper database with the information she collected. Ms. Gutekanst reported that Ms. Chestnutt was repeatedly informed of the expectations Cascino Vaughan had of her and her failure to meet them, but nonetheless did not improve her performance. In addition, Ms. Gutekanst states that Ms. Chestnutt did not perform any extra hours of work to make up for the time she was on jury duty.

Mr. Vaughan's affidavit corroborates Ms. Gutekanst's story. He states that Ms. Chestnutt never properly learned how to do her job, and that she did not follow instructions. In addition, Ms. Chestnutt only met with Mr. Vaughan once to discuss client intake, despite "numerous requests" from Mr. Vaughan that Ms. Chestnutt initiate meetings with him. Moreover, he reported that Ms. Chestnutt failed to provide several specific items and assignments that he had requested of her.

Ms. Chestnutt's reply letter of October 31, 2012, chiefly responds to the allegations that she did not adequately perform the tasks that were expected of her as an employee. In particular, she states that she did not receive adequate training on how to operate the Paradox database, and that she repeatedly requested but did not receive additional training. She acknowledges that she did not work overtime (that is, more than 40 hours a week) to make up for the time she was serving on the grand jury, but points out that she averaged more than seven hours of work each day with the firm, when employees of the firm usually work only seven hours each day. Ms. Chestnutt also reconfirmed her version of her September 17, 2012, termination, stating that Mr. Cascino told her she was terminated because of "budgetary constraints," and that Ms. Gutekanst had told her that Mr. Vaughan wanted

to let her go because "Tuesdays were getting in the way."

LEGAL STANDARD

In 1978, Congress enacted 28 U.S.C. § 1875 to accord statutory protection to the employment status of federal jurors during jury service and to give federal district courts original jurisdiction under 28 U.S.C. § 1363 to hear civil claims brought by jurors alleging wrongful termination in retaliation for jury service. H.R. Rep. No. 95-1652, at 1 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5477, 5477. Previously, courts had used their contempt powers to punish employers that had retaliated against employees for jury service. Relying on contempt powers had been ineffective, however, because jurors were frequently reluctant to report employer intimidation and employer action was purposefully designed to evade an effective response by the courts. H.R. Rep. No. 95-1652, at 7, *reprinted in* 1978 U.S.C.C.A.N. at 5480. Section 1875 performs several functions to protect jurors from unlawful termination. The statute puts employers on notice of their legal duties, offers employees assurances that their rights are protected by the law, and gives district courts explicit jurisdiction to hear matters regarding juror discrimination.

Section 1875 creates a statutory right of protection for federal jurors' employment, stating that "[n]o employer shall discharge, threaten to discharge, intimidate, or coerce any permanent employee by reason of such employee's jury service, or the attendance or scheduled attendance in connection with such service, in any court of the United States." 28 U.S.C. § 1875(a). Under the statute, a juror is entitled to damages for any loss of wages or other benefits suffered due to a violation. 28 U.S.C. § 1875(b)(1). Furthermore, the court may enter injunctive relief, such as reinstatement of a juror's employment. 28 U.S.C. § 1875(b)(2). A civil penalty of not more than $5,000 per violation may be imposed on the employer as well. 28 U.S.C. § 1875(b)(3).

Upon application by an individual claiming wrongful discrimination based on his or her juror status, the court may appoint counsel for the individual if the claim is found to have "probable merit." 28 U.S.C. § 1875(d)(1). "A probable merit threshold is a low standard, whereby the court finds it is *likely* for the claim to have merit." *In re Steven Geocaris, a Member of a Petit Jury*, No. 1:08-cv-07213, 2008 WL 5263145, at *2 (N.D. Ill. Dec. 17, 2008) (emphasis in original). Appointed counsel "shall be compensated and necessary expenses repaid to the extent provided by section 3006A of title 18, United States Code," the statute addressing payment of appointed counsel for criminal defendants. 28 U.S.C. § 1875(d)(1). Additionally, should an employee prevail, the court may award attorney's fees to the employee pursuant to 28 U.S.C. § 1875(d)(2).

ANALYSIS

The court's role at this time is to assess whether there is probable merit to Ms. Chestnutt's claim that Cascino Vaughan terminated her because of her jury service. Given the nature of this rather low standard, the court finds based on the facts in the record that there is probable merit to Ms. Chestnutt's claim.

At this early stage of the case, the court is confronted with two explicitly contradictory accounts of the events surrounding Ms. Chestnutt's termination. Ms. Chestnutt's version of the story, if true, plainly establishes a violation of § 1875(a) because it indicates that Cascino Vaughan fired her because of her service on the grand jury. Cascino Vaughan disputes Ms. Chestnutt's account and asserts that Ms. Chestnutt was fired because of her poor performance.

Although at this stage of the proceedings, the court lacks the tools to decide definitively between the two accounts, there are a number of factors that make Ms. Chestnutt's account plausible enough to meet the "probable merit" threshold. First, Ms. Chestnutt's termination occurred only

several weeks after she was chosen to serve on a grand jury. The timing may be only a coincidence, but the close temporal connection between the beginning of Ms. Chestnutt's jury service and her termination bolsters her story. Second, the court finds it troubling that Cascino Vaughan submitted no documentary evidence to corroborate its account of Ms. Chestnutt's poor performance.[1] If Ms. Chestnutt had performed as poorly as Cascino Vaughan alleges, one would expect it to have performance evaluations, copies of e-mails, personnel records, or some other memorialized evidence of her inadequacies. Cascino Vaughan submitted nothing of the kind.

Third, the recommendation letter that Cascino Vaughan provided to Ms. Chestnutt casts some doubt on Cascino Vaughan's story. The letter states that "[w]e are very sorry to see Ms. Chestnutt leave" and explains that "[i]n her duties here at Cascino Vaughan, Ms. Chestnutt worked diligently and effectively. . . . Ms. Chestnutt was well liked by her colleagues, due to her friendly demeanor. She is confident and knowledgeable in her responsibilities and a quick learner. We are sorry that circumstances have forced us to part ways with Ms. Chestnutt." Those statements directly contradict Cascino Vaughan's stated reasons for firing Ms. Chestnutt. Ms. Gutekanst states that Cascino Vaughan provides all exiting employees with a "standard" letter of recommendation comparable to Ms. Chestnutt's letter, which is "complementary [sic] but not effusive." For comparison, Cascino Vaughan submitted a copy of a "glowing" recommendation letter that it provided to an employee it believed performed well.

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[1] Cascino Vaughan did submit Ms. Chestnutt's timesheets, which indicate that she worked between seven and eight hours each day, the training materials that Ms. Chestnutt received, and examples of the Paradox reports that Ms. Chestnutt should have been producing, but allegedly was not. In addition, Cascino Vaughan submitted Lexis search statistics showing that Ms. Chestnutt performed Lexis searches more slowly than another employee. None of those materials conclusively document poor work performance on Ms. Chestnutt's part.

The court is not persuaded. Neutral recommendation letters merely confirming the dates of an employee's employment are customary when an employee is terminated for poor performance. Cascino Vaughan went further here and actually praised Ms. Chestnutt's work. The court finds it unlikely that Cascino Vaughan would have issued such praise if it had just terminated Ms. Chestnutt for poor performance.

Finally, the court finds it odd that Cascino Vaughan submitted no affidavit from Mr. Cascino, the partner who actually terminated Ms. Chestnutt. Given that Mr. Cascino is available to provide an affidavit, his silence may suggest that he has something to hide.

For all of those reasons, at this preliminary stage the court finds there is sufficient evidence to establish the statutorily required "probable merit" to Ms. Chestnutt's claim that Cascino Vaughan terminated her because of his jury service in violation of 28 U.S.C. § 1875. In making this ruling, the court emphasizes that this finding is based on a preliminary evaluation of Ms. Chestnutt's claim and constitutes a preliminary finding that Ms. Chestnutt's claim is likely but is not certain to have merit. Appointed counsel should undertake a further pre-filing investigation to make a determination consistent with Federal Rule of Civil Procedure 11 of whether a civil suit should be filed.

CONCLUSION

The court orders the appointment of counsel for juror Colleen F. Chestnutt pursuant to 28 U.S.C. § 1875 and appoints attorney Lisa Kane to represent juror Colleen F. Chestnutt in her claim of juror discrimination against her employer, Cascino Vaughan Law Offices, Ltd. Appointed counsel is requested to contact Ms. Chestnutt upon receipt of this appointment.

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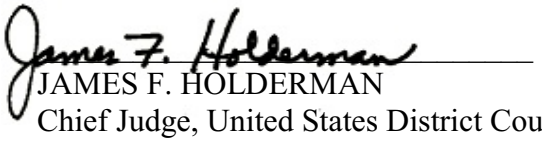

JAMES F. HOLDERMAN
Chief Judge, United States District Court

Date: November 2, 2012