UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

G E N E R A L O R D E R 10-002

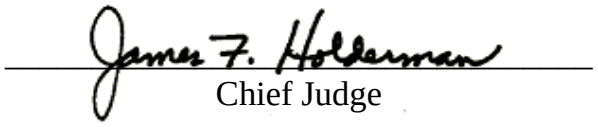
Order Finding Probable Merit on Claim of Grand Juror Jonathan E. Stott against Indian Prairie Community Unit School District 204 of a Violation of 28 U.S.C. § 1875 and Appointment of Counsel

FOR THE PURPOSE OF addressing grand juror Jonathan E. Stott's claim to this court that he was discriminated against by his employer, Indian Prairie Community Unit School District 204, because of his 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 Jonathan E. Stott's claim of discrimination by Indian Prairie Community Unit School District 204 by reason of Mr. Stott'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 Jonathan E. Stott in any action in the district court necessary to the resolution of such claim. The filing fee of any such action is ordered waived.

ENTER:

FOR THE COURT



Chief Judge

Dated at Chicago, Illinois this 22nd day of February, 2010.

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

IN RE A MEMBER OF A SPECIAL GRAND JURY: JONATHAN E. STOTT	)	General Order 10-002

MEMORANDUM OPINION ACCOMPANYING GENERAL ORDER

JAMES F. HOLDERMAN, Chief Judge:

On January 5, 2010, Jonathan E. Stott, a member of a Special Grand Jury of this district, contacted my chambers and told a member of my staff that he believed he was being unfairly and unlawfully discriminated against by his employer, Indian Prairie Community Unit School District 204 (the "School District"), because of his grand jury service. After meeting with Mr. Stott on January 5, 2010, and January 12, 2010, I informed the School District in a letter sent January 13, 2010, of Mr. Stott's claim and asked the School District to provide a response to the court. Having now received the School District's response, as well as Mr. Stott's reply, and having evaluated all of the information provided to me by Mr. Stott and by counsel for the School District, Dawn M. Hinkle, I find for the reasons set forth below that there is probable merit to Mr. Stott's claim and hereby appoint counsel to represent Mr. Stott in accordance with 28 U.S.C. § 1875(d)(1).

FACTUAL BACKGROUND

On August 21, 2009, Mr. Stott was selected to be a member of a Special Grand Jury empaneled by this court. The August 2009 Special Grand Jury remains active to the present day, and the court's records indicate that Mr. Stott has regularly attended the grand jury's weekly meetings.

At the time Mr. Stott first contacted the court regarding his juror discrimination claim, he was employed as a teaching assistant and tennis coach for Metea Valley High School ("Metea Valley") in Aurora, Illinois, which is part of Indian Prairie Community Unit School District 204. In his capacity as Metea Valley's head tennis coach, Mr. Stott reported to athletic director Tom Schweer. Mr. Stott also worked with assistant coach Vince Wong.

Because the August 2009 Special Grand Jury meets on Tuesdays, Mr. Stott was unable to actively coach the Metea Valley tennis teams at any matches occurring on Tuesdays. During the fall of 2009, Mr. Schweer rearranged the tennis schedule to accommodate Mr. Stott's grand jury service—rescheduling any "away" matches to take place at Metea Valley, so Mr. Wong could coach both the varsity matches and the junior varsity matches at the same time. At some point during the last week of December, however, Mr. Schweer told Mr. Stott that he was not going to rearrange the spring tennis schedule to accommodate Mr. Stott's grand jury service, noting without further elaboration that "there would be changes in the spring."[1]

Mr. Schweer also made comments directed specifically to Mr. Stott's jury service. On one occasion, Mr. Schweer commented to Mr. Stott that his (Mr. Schweer's) wife is a court

[1] All conversations between Mr. Stott and Mr. Schweer appear as recounted to the court by Mr. Stott, unless otherwise noted. The court is cognizant of the fact that, at this point in the proceedings, Mr. Schweer has not had an opportunity to represent his version of these events.

reporter and he understands everything that goes into jury service, "but this is just garbage." Mr. Schweer also told either Mr. Stott or Mr. Wong that "this jury duty stuff, we have to make some changes." Mr. Schweer told Mr. Wong that he was having problems with Mr. Stott missing Tuesdays, that there would be "significant changes regarding Jon," and that he was "not going to put up with this crap."

On Tuesday, January 5, 2010, Mr. Stott met with me, members of my staff, and the August 2009 Special Grand Jury foreperson to inform me of the facts set forth above and note his concern that, because of his grand jury service, he was going to be fired as head tennis coach. Mr. Stott already had a subsequent meeting scheduled with Mr. Schweer for January 7, 2010, and I invited Mr. Stott to return to my chambers for a follow-up discussion on January 12, 2010. I also explained to Mr. Stott the procedures in place in the Northern District of Illinois to investigate allegations of juror discrimination.

At their meeting on January 7, 2010, Mr. Schweer told Mr. Stott that he wanted Mr. Stott to continue as head coach, but "I can't have the head coach gone for our matches." Mr. Schweer noted the "hassle" and "huge pain" it had been to rearrange the fall schedule around Mr. Stott's jury service, the negative impact this scheduling had on other coaches in the conference, and the students' impression that their head coach was "not there." Mr. Schweer noted his intention to bring in another coach to "take [Mr. Stott's] spot," which would "probably" result in a pay deduction for Mr. Stott, and he encouraged Mr. Stott to consider a position as assistant coach. He asked Mr. Stott to state in writing the highlights and low points of the fall season, and to "reflect upon" the season as a whole. Mr. Schweer also noted his concerns regarding Mr. Stott's ability to effectively communicate with him and with parents in a timely manner via email, a

concern that he had raised with Mr. Stott in early December, as well.

On Tuesday, January 12, 2010, Mr. Stott again met with me, members of my staff, and the August 2009 Special Grand Jury foreperson. At that time, Mr. Stott informed me of his intention to resign from his tennis coaching position at Metea Valley, and he confirmed with me his desire to pursue his juror discrimination claim. Mr. Stott also stated his concern that Mr. Schweer's comments to other coaches about re-scheduling Tuesday matches were hurting Mr. Stott's reputation as a coach by suggesting that he was unreliable.

In accordance with our court procedures, I mailed a letter to Mr. Jim Schmid, Principal of Metea Valley High School, on January 13, 2010, setting forth Mr. Stott's allegations and seeking from Metea Valley a "written statement of the circumstances regarding Mr. Stott's employment and the procedures Metea Valley High School has taken to accommodate his grand jury service," along with any relevant documentation.

Also on Wednesday, January 13, 2010, Mr. Stott sent Mr. Schweer an email stating, "Due to our last conversation and previous conversations that we've had, I do not want to be 'demoted and have my pay deducated because of my civic responsilbity to Jury duty' on tuesdays. So i am resigning as head coach." (quotations marks and errors in original). Mr. Schweer responded via email, noting, "We never even talked about that. We talked about what are our options to work out Tues," and he asked Mr. Stott to see him in person. A follow-up email from Mr. Schweer to Mr. Stott that same morning reiterates certain points apparently discussed at their in-person meeting, namely: Mr. Schweer's position that he wants Mr. Stott to remain the head tennis coach, that he never discussed with Mr. Stott the possibility of a demotion or pay cut, and that he did discuss with him the possibility of bringing in a third coach to

"function as the Head Coach when you were not available." Mr. Stott emailed my chambers that same day to inform me of these developments. In his email, Mr. Stott recalled that Mr. Schweer had made conflicting statements during the January 13, 2010, morning conversation, noting that "your pay wouldn't be reduced" but also "if I bring in another person [to cover Tuesdays] . . . we would have to talk then about deducting pay because we'd have to pay the other coach."

Mr. Schweer also approached Mr. Stott in the bathroom later in the day on January 13, 2010, where Mr. Stott was assisting one of his special education students. Mr. Schweer poked Mr. Stott in the chest with his finger, stating "I'm not going to let you quit" and "whatever you heard, you didn't hear. . . I don't know what you're talking about." Mr. Stott recalls that throughout all conversations with Mr. Schweer on January 13, 2010, Mr. Schweer repeatedly stated that he wanted Mr. Stott to remain the head tennis coach at Metea Valley. Additionally, after receiving the court's communication, Principal Schmid met with Mr. Stott and repeatedly offered to reinstate Mr. Stott as head tennis coach. Mr. Stott declined this offer.

The School District responded to my letter on January 27, 2010, noting that it "has and will continue to excuse all absences for Mr. Stott's grand jury service, provide full compensation for those days, and arrange for appropriate personnel coverage for those days." The School District admits that Mr. Schweer discussed with Mr. Stott "arrangements for coaching coverage during his absences for grand jury service," but notes that Mr. Schweer "never intended or implied that Mr. Stott would be demoted or paid less." It is the School District's position that Mr. Stott misinterpreted his conversations with Mr. Schweer.

Finally, on February 8, 2010, Mr. Stott confirmed with me via email his desire to pursue his juror discrimination claim, reiterating his position that Mr. Schweer "intend[ed] and implied

for me to be demoted and deduct my pay, through his words and actions."

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. 95-1652, 95th Cong., 2d Session (1978), 1978 U.S.C.C.A.N. 5477. Previously, courts had used their contempt powers to punish employers that had retaliated against employees, but relying on contempt powers had been ineffective because jurors were frequently reluctant to report the intimidation or threats and employer action was purposefully designed to evade an effective response by the courts. *Id*. 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

This court's role at this time is to assess whether there is probable merit to Mr. Stott's claim that the School District discriminated against him because of his grand 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 Mr. Stott's claim.

The court is mindful of the School District's uncontradicted assertion that, from the beginning of his grand jury service, Mr. Stott has been excused from all absences caused by his grand jury service, that he has received full compensation for those absences, and appropriate personnel coverage has been arranged for those absences. However, it also appears likely from the information now before the court that Mr. Schweer suggested to Mr. Stott that he should

consider becoming an assistant coach (rather than head coach) as a means of "accommodating" Mr. Stott's jury service, and that Mr. Stott might receive a pay cut in this capacity. Mr. Stott reports feeling coerced, threatened, and intimidated by these conversations. Whether these conversations actually took place, their content, their intended effect on Mr. Stott, and their actual effect on Mr. Stott are fact-based questions that hinge on the credibility of Mr. Stott and Mr. Schweer.[2] To be liable under § 1875(a), the School District only needed to "threaten to discharge, intimidate, or coerce [Mr. Stott] by reason of [his] jury service, or the attendance or scheduled attendance in connection with such service." 28 U.S.C. § 1875(a). Based on the plain language of the statute, it is irrelevant whether the School District actually planned on demoting Mr. Stott or reducing his pay. The court finds that Mr. Schweer's statements, which were directly related to Mr. Stott's grand jury attendance, could very well be found to have deprived Mr. Stott of the job security to which all grand jurors are entitled under 28 U.S.C. § 1875.

At this preliminary stage, the court finds there is sufficient evidence to establish the statutorily required "probable merit" to Mr. Stott's claim that Mr. Schweer's statements constituted intimidation or coercion of a permanent employee by an employer due to the employee's grand 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 Mr. Stott's claim and constitutes a preliminary finding that Mr. Stott's claim is likely but is not certain to have merit.[3]

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[2] Again, the court recognizes that it has not had an opportunity to hear Mr. Schweer's version of these events.

[3]The term "probable" is defined as "relatively likely but not certain; plausible." *The American Heritage Dictionary* 987 (2d College ed.1982); *see also Merriam-Webster Online Dictionary* (2009), *available at* http://www.merriam-webster.com (defining "probable" as "likely to be or become true or real").

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 grand juror Jonathan E. Stott pursuant to 28 U.S.C. § 1875 and appoints attorney Richard J. Gonzalez to represent grand juror Jonathan E. Stott in his claim of juror discrimination against his employer, Indian Prairie Community Unit School District 204. Appointed counsel is requested to contact Mr. Stott upon receipt of this appointment.

ENTER:

JAMES F. HOLDERMAN
Chief Judge, United States District Court

Date: February 22, 2010