



The defense seeks to use Plaintiff's job-seeking efforts since 2007 to support a negative inference about his qualifications for the UK job. Plaintiff recognizes that efforts to mitigate will be legitimate evidence but seeks to block Defendant from suggesting that post-2007 difficulties in securing employment in any way reflect poorly on Gaskell's qualifications for the position at issue in this case.

- b. DE #57: Defendant's motion in limine to preclude witness Kovash from testifying about any anti-religious bias of witness Shafer. *See* DE #60 (Response).

The parties strongly disagree over whether witness Kovash should be permitted to give any testimony about whether witness Shafer has an anti-religious bias. Kovash and Shafer were previously married, and Kovash may have information he characterizes as showing hostility to religion by Shafer. Shafer was a Search Committee member, did the Google search that secured lecture notes that may have been important in Gaskell's nonselection, and did make an arguably negative statement about Gaskell being "potentially evangelical." *See* DE #47 Opinion. At this point, exactly what Kovash might say is not clear. Judge Forester may want to assess avowal testimony before finally ruling on this issue, especially since Plaintiff is unsure whether he will broach the contested topic with Kovash on the stand.

- c. Plaintiff's objections to defense exhibits. *See* DE #55; DE #63.

The lone remaining exhibit objections are to Defense Exhibits 104 and 101. The objection to Exhibit 104 (a listing of jobs sought/search results of Dr. Gaskell) is bound up in Plaintiff's motion in limine (DE #51). The objection to Exhibit 101 exists because the defense failed to produce the email in discovery. The defense admits the inadvertent non-production. Plaintiff objects and seeks preclusion because of an argument the defense might make centered on the document.

- d. Defendant's imbedded objections to witness Kovash (testifying about statements made by Search Committee members) and to any witnesses testifying about the ultimate motivations of the Search Committee. *See* DE #52 at 18-20 (objection); DE #55 at 2-4 (response).

The defense maintains, based on hearsay, that Kovash should not be permitted to relate statements made by persons on the Search Committee. The objection gives no specific examples. Thus, prior to testimony by Kovash, the defense must assert this objection again to permit Judge Forester an opportunity to judge any such statement in context. The objection does not identify which declarant(s) would be at issue, and Judge Forester may need to analyze whether the statements are admissions or otherwise non-hearsay under a different rule, such as Rule 803(3). *See* DE #47 (Opinion) at 14-15.

The defense further seeks to block any witness from testifying about the role of religion in the hiring decision, casting this as the "ultimate question" for the jury.

4. The Court explained the jury selection process that will apply, resulting in an 8 juror panel after cause strikes and 3 peremptory challenges per side.

The defense raised several matters for exploration in voir dire, including the need to probe jurors regarding knowledge of this case, affiliation with the public interest group of Plaintiff's counsel, and the potential for religious bias. The defense shall be prepared to advise Judge Forester of any specific lines of proposed questions in advance of counsel's voir dire. The Court permitted the defense to tender a fundraising letter concerning the public-interest group at issue. *See* Defendant's Pretrial Exhibit 1.

5. The parties reached agreement as to DE #58, and the defense withdrew that motion based on the agreement. That motion should be terminated as **WITHDRAWN**.

6. The Court conducted a bench conference on the issue of compliance with ¶ 8 of the Amended Scheduling Order. Because of a lawful privilege, the transcript shall be sealed as to that matter.

7. The parties have tendered their instructions. Both sides agree that the issues of front and back pay are properly submitted to a jury. Plaintiff believes the jury verdict as to such remedies is final, but Defendant believes the jury result is only advisory because the remedies contemplated, per Title VII, are equitable. The Court directed the parties to be prepared to address these matters, with authority, when Judge Forester deals with jury instructions.

This the 6th day of January, 2011.



Signed By:

Robert E. Wier

A handwritten signature in black ink that reads "REW".

United States Magistrate Judge

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