

STATE OF VERMONT

SUPERIOR COURT  
Washington Unit

CIVIL DIVISION  
Docket No. 79-2-17 Wncv

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P. MARK POTANAS,  
Plaintiff,

v.

VERMONT DEPARTMENT OF  
CORRECTIONS,  
Defendant.

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RULING ON THE DEFENDANT'S MOTIONS IN LIMINE

In the amended complaint, Plaintiff P. Mark Potanas, seeks relief under Vermont's Whistleblower Protection Act, 3 V.S.A. §§ 971–978, following the termination of his employment as a superintendent at the Southern State Correctional Facility operated by the Vermont Department of Corrections.<sup>1</sup> Trial is scheduled to begin on January 23, 2023. The State has filed two, largely overlapping motions in limine.

There was no substantial motion practice in this case before the time for dispositive motions expired. More than 6 months later, after being advised by the court clerk that jury trials in Washington Civil were set to resume, the State filed a motion to amend the scheduling order to permit it to file a dispositive motion as well as a substantial summary judgment motion. The court denied the motion to amend, rendering the summary judgment motion moot. In the weeks leading up to the November 29 jury draw, the State then filed the two pending motions in limine.

In the misfired summary judgment motion, the State sought several rulings as to the nature of the elements of Mr. Potanas's claim and how the purportedly undisputed facts fare under them. In large part, the State has attempted to reassert those arguments under the guise of its motions in limine, seeking essentially the same rulings, but this time without the benefit of the procedural protections and factual statements contemplated by Rule 56. The court declines to address these matters in this posture. As necessary, the issues may be resolved in the course of trial and in the jury instructions, which, the court notes, neither party submitted following the court's request to do so prior to the jury draw. See Entry (filed Nov. 10, 2022).

The only substantial issue raised in the in limine motions, but not in the summary judgment motion, relates to 12 V.S.A. § 1691a. The State asserts that it anticipates that Mr. Potanas will be seeking testimony from State employees without having first complied

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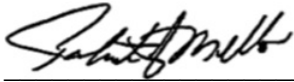
<sup>1</sup> The whistleblower claim is the only claim left in this case. Mr. Potanas has withdrawn an earlier asserted claim under Rule 75.

with the notice requirement of § 1691a. Section 1691a provides that a party to a civil case must notify a State employee, giving time to object, when seeking production of written or electronic personnel records related to that employee. The State argues that this provision should apply to testimony that might reveal, in effect, the content of those records. The provision is not so expansive. It applies to written or electronic records only, and Mr. Potanas apparently has not sought discovery of any such records and says that he does not intend to introduce any into the record. Section 1691a also expressly does not apply to cases “in which employment discrimination is alleged.” 12 V.S.A. § 1691a(b)(1). Retaliation is a form of discrimination. Section 1691a is irrelevant to this case.

Order

For the foregoing reasons, the State’s motions in limine are denied.

SO ORDERED this 9<sup>th</sup> day of December, 2022.



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Robert A. Mello  
Superior Judge