

CASE MANAGEMENT CONFERENCE ORDER

MARK VOLPEI vs COUNTY OF VENTURA et al (VENC100395788)
And the Related Case of
JOSEPH CIPOLLINI vs COUNTY OF VENTURA et al (VENC100395800)
(8:30 am)

Wednesday, April 30, 2014

1. Complex Litigation. I have designated these cases as falling within the meaning of California Standards of Judicial Management for Complex Litigation. The Court does not believe complex litigation fees are appropriate to be levied; thus all such fees are waived.

2. Case Management Statements. I have read the CMCSs filed by each side. Any party is welcome to file a case management statement prior to the conference; but it is not required. The case management statement should set out any new issues or information utilizing this Case Management Order as a form. Where the parties differ on what the Court should do, the CMS should simply set out the position of any of the litigants. Please submit the CMS in Word format and not in PDF format. You are welcome to email me (tanderle@sbcourts.org) what you want me to read as long as everyone in the case receives a copy of the email. Keep in mind I will not "file" anything you email to me; I consider it a courtesy copy. It is my intention to have this case tried on the date set.

3. Email posting of tentative case management order. Routinely a tentative case management order will be emailed the afternoon before the conference. Telephone appearances at the CMC are permitted. The final CMCO will be emailed to counsel.

Email addresses: 'lannytron@tronlaw.com'; 'pkim@aalrr.com'; 'mark@pachowicz.com'; 'mpalin@aalrr.com'; 'eho@aalrr.com'; 'jsetoguchi@aalrr.com'; 'terrytron@tronlaw.com'; 'Charlene@pachowicz.com;

4. Description of the cases.

The Volpei case

The following facts are taken from plaintiff Mark D. Volpei's first amended complaint ("FAC"):

Volpei began working for defendant County of Ventura, Office of the Ventura County District Attorney ("VCDA") in 1994. He was assigned to the VCDA Bureau of Investigations. (*Ibid.*) While employed by the VCDA, Volpei performed his job duties in an outstanding manner and was awarded numerous commendations.

In 2001 Volpei disclosed to his superior that he witnessed numerous violations of state and federal laws and regulations as well as gross mismanagement and abuses of authority. In 2001, Volpei received and recorded statements from a reliable informant that an ex-girlfriend of a high ranking official of VCDA was providing confidential information to a member of a

notorious motorcycle gang facing felony charges. Volpei provided the informant's recorded statements to the defendants. Defendants told Volpei that the possibly exculpatory information he had documented in two separate reports would not be produced to the attorneys for the criminal defendants. As a result of Volpei's disclosures about unethical and possibly criminal behavior of the defendants, defendants retaliated against Volpei including disparate treatment and downgrading of job status.

Also in 2001, Volpei disclosed to defendants various violations of state and federal laws and regulations and abuses of authority as to a witness who was exploited. Volpei testified regarding this behavior. As a result, defendants engaged in a prolonged campaign of retaliation.

In 2007, during one of Volpei's criminal investigations, Volpei discovered that several routine, but important aspects of an earlier investigation had not been completed by the original local police agency. While completing his investigation, Volpei learned the criminal defendant was reportedly sexually involved with the highest ranking member of the same local police agency that had investigated the crime. Volpei disclosed the results of his investigation to defendants. Defendants chastised Volpei for documenting the relationship of the highest ranking police officer with the defendant. Despite the implications of the reported relationship for the criminal investigation, Volpei was ordered by defendants not to investigate further, discuss or disclose the relationship to anyone. Defendants ordered Volpei not to produce his police reports detailing the relationship to that defendant's defense attorney. Volpei questioned the defendants' apparent violation of law, to which defendants verbally assaulted Volpei and again ordered him not to disclose or discuss the reported relationship. As a result of Volpei's unwillingness to remain silent when confronted with defendants' unlawful demand, defendants retaliated against Volpei, including disparate treatment and further job reductions in job duties.

In 2008, Volpei was assigned a criminal investigation involving personnel employed by the Ventura County Public Guardian's Office. Over the course of a three year investigation, Volpei learned that hundreds of elders and disabled persons who were under conservatorship of that agency had been victimized by the misappropriation and mismanagement of funds and assets by employees of that agency. Volpei disclosed his findings in a report to defendant Greg Totten, one of his superiors, and to others at the VCDA. Volpei alerted the defendants to the complete breakdown in the various county agencies and insisted on a comprehensive audit of the estates of affected individuals. Defendants disregarded Volpei's recommendations and ordered Volpei to limit his investigation. Volpei's internal documents were censored and corrected by defendants to minimize and exclude information that exposed the magnitude of the thefts and mismanagement at that agency. Volpei was ordered to disregard the evidence as to management and to investigate only the lowest level of management. Later at a meeting when Volpei informed several department managers of defendant Ventura County ("County") of the issues involved in his investigation, Volpei was advised that an audit of each affected estate would be cost-prohibitive to County and rejected Volpei's recommendations. After the meeting, Volpei was subjected to repeated instances of retaliation in the workplace by defendants.

In 2008, Volpei provided truthful testimony as to a VCDA Senior Deputy District Attorney's improper trial tactics. After testifying, Volpei was subjected to further instances of retaliation and harassment.

Also in 2008, Volpei provided truthful deposition testimony in the sexual discrimination lawsuit entitled *Tammy Schwitzer v. County of Ventura*. Volpei also testified and participated in the complaints of discrimination and harassment alleged by co-worker Leslie Robertson by providing truthful testimony to his superiors at VCDA. After testifying regarding these complaints of discrimination and harassment, Volpei was subjected to repeated instances of retaliation in the workplace by defendants.

The campaign of retaliation against Volpei included frivolous internal investigations, disparate treatment, and lessening of job responsibilities and duties. Volpei addressed the retaliatory acts by speaking with the perpetrators as well as by notifying his supervisors and managers. The retaliation continued.

In 2008, Volpei sought medical treatment for physically disabling shoulder injuries he had sustained over a period of time while on the job. Volpei advised the defendants of his shoulder injuries. After his shoulder surgery, Volpei sought to return to work as he was aware that other employees with similar disabilities were accommodated. Defendants refused to reasonably accommodate Volpei. Thereafter in 2009 and into early 2010, defendants failed to engage in a good-faith, interactive process to determine a reasonable accommodation for Volpei's disability.

As a result of defendants' actions over the course of several years, plaintiff was constructively terminated and forced to seek a medical retirement that was granted on July 12, 2010.

Volpei submitted a claim for damages to County which was rejected by on November 1, 2010. In November 2010, Volpei filed charges of discrimination, retaliation and harassment with the California Department of Fair Employment and Housing ("DFEH"). Volpei received right to sue notices from the DFEH.

Volpei filed his complaint on April 22, 2011, in Ventura County Superior Court. Volpei filed his FAC on April 27, 2012. The FAC sets forth seven causes of action: (1) unlawful disability discrimination; (2) failure to engage in a good faith interactive process; (3) failure to provide a reasonable accommodation; (4) unlawful retaliation in violation of the Fair Employment and Housing Act, Government Code section 12940 et seq. ("FEHA"); (5) failure to prevent discrimination; (6) unlawful retaliation in violation of Labor Code section 1102.5, subdivision (b); and (7) violation of California Peace Officers' Bill of Rights.

The Cipollini case

The following facts are taken from plaintiff Joseph R. Cipollini's complaint:

Cipollini began working for defendant County of Ventura, Office of the Ventura County District Attorney ("VCDA") in May 1990. He was assigned to the VCDA Bureau of

Investigations. While employed by the VCDA, Cipollini performed his job duties in an outstanding manner and was awarded numerous commendations.

In early 2008, Cipollini's working conditions became intolerable after he provided truthful deposition testimony in the sexual discrimination lawsuit entitled *Tammy Schwitzer v. County of Ventura*. Cipollini also testified and participated in the complaints of discrimination and harassment alleged by co-workers Robert Velasquez and Leslie Robertson by providing truthful testimony to his superiors at VCDA. After testifying regarding these complaints of discrimination and harassment, Cipollini was subjected to severe and pervasive harassment and repeated instances of retaliation in the workplace by defendants.

Cipollini was constantly being harassed by defendant Wayne Simmons, one of Cipollini's supervisors. The harassment by Simmons included: usurping Cipollini's role as the supervisor and trainer to civilian examiners at VCDA's High Tech Task Force ("HTTF"); diluting Cipollini's job responsibilities by effectively eliminating the command structure of the HTTF; assigning menial tasks to Cipollini; excluding Cipollini from operative decisions while seeking input from subordinates; intentionally failing to introduce Cipollini to visiting personnel, VCDA newly hired personnel, and visitors from other law enforcement agencies; barring Cipollini from the decision-making processes of case and field assignments; failing to acknowledge Cipollini's accomplishments; denying Cipollini opportunities for overtime pay for no justifiable reason; and, depriving Cipollini of administrative support.

The harassment by Simmons was fully supported by defendants Robert A. Briner and Glen A. Kitzmann, two of Cipollini's other supervisors. The conduct rose to such a pervasive level that Cipollini submitted complaints to defendants James Ellison and Greg Totten. Despite Cipollini's written complaints in May 2009, the harassment by Simmons, Briner and Kitzmann continued. Totten, Ellison, Briner, Kitzmann and Simmons could have readily remedied these conditions, but they refused and failed to do so.

In November 2009, Cipollini advised his employer and defendants that he suffered a physical disability to his neck and upper extremities. After a medical treatment for these conditions, Cipollini sought to return to work, but defendants encumbered his return by taking his assigned vehicle, then forcing him to expend more than 40 hours of personal accrued annual leave for doctors' appointments and physical therapy. Defendants failed to reimburse plaintiff for the loss of personal accrued time claiming that it was the responsibility of County of Ventura's insurer; the insurer denied the claim contending it was the responsibility of County of Ventura ("County").

In late 2009 and early 2010, defendants failed to engage in a good-faith interactive process to determine a reasonable accommodation for Cipollini's disability. Instead, defendants initiated a biased internal investigation into Cipollini's disability. Cipollini could no longer tolerate the working conditions and was forced to resign his employment on March 26, 2010.

Cipollini submitted a claim for damages to County which was rejected by operation of law on October 25, 2010. In September 2010, Cipollini filed charges of discrimination, retaliation

and harassment with the California Department of Fair Employment and Housing (“DFEH”). Cipollini received right to sue notices from the DFEH.

Cipollini’s complaint to the DFEH states that Cipollini was harassed, forced to quit and denied accommodation because of his association and physical disability, and because of his participating in the investigation by, and in retaliation for, testifying in a co-worker’s discrimination case.

Cipollini filed his complaint on April 22, 2011, in Ventura County Superior Court. The complaint sets forth five causes of action: (1) unlawful retaliation in violation of FEHA; (2) unlawful harassment in violation of FEHA; (3) unlawful disability discrimination in violation of FEHA; (4) failure to engage in a good faith interactive process in violation of FEHA; and (5) failure to prevent discrimination in violation of FEHA.

5. Status of the Pleadings. All pleadings are in; the Remittitur was filed on January 13, 2014.

6. Trial date

A. The Volpei case is set for trial on October 28, 2014; I have reserved 15 court days for trial. A jury has been requested.

B. The Cipolliani case will trail Volpei for trial; it will be tried immediately following Volpei; I have reserved 15 court days for trial. A jury has been requested.

C. I have not overlooked the fact that counsel previously asked for an interim between the trial of the two cases to allow counsel the opportunity to address settlement in Cipolliani once a jury has decided Volpei; but I have very experienced counsel in this case and these cases have been in transition for a long time; I need to get them done.

D. I also have not ignored the defense request that Volpei be tried second, but plaintiffs’ counsel asked for Volpei to be tried first and I have accepted that suggestion.

7. Settlement Conference. A Mandatory Settlement Conference set for August 29, 2014 at 8:30 am in Department 5. Briefs are due one week in advance; the Court will have a special settlement master at the conference; we take these cases seriously. The Court will vacate that Conference if the lawyers agree on a Mediator and actually schedule mediation date(s).

8. The parties and trial counsel are:

VOLPEI case

Plaintiff

Mark Volpi

Trial Counsel

Lanny Tron

Defendants

County of Ventura et al

Mark Palin

CIPOLLINI case

Plaintiff

Trial Counsel

Joseph Cipollini

Mark Pachowicz

Defendants

County of Ventura et al

Mark Palin

9. Trial date schedules. Please do not send me updated "trial date schedules" or "potential conflicts" with the trial date; the trial date is firm; I cannot adjust the trial date if you are in another case; you will have to have backup counsel; there are just too many lawyers to accommodate.

10. Special Master/Mediator (SM): Efforts have been made and the Court will not raise the issue again as it would be counterproductive.

11. Date Discovery is to be completed

A. Written discovery; will be completed by August 29, 2014.

B. Depositions; except for experts will be completed by August 29, 2014.

12. Status of the discovery

A. Depositions

Plaintiffs' depositions are scheduled as follows:

<u>Witness</u>	<u>Scheduled deposition date</u>
Mark Volpei	Completion no later than May 30
Joseph Cipollini	June 9 and 10

Defendants' depositions are scheduled as follows:

<u>Witness</u>	<u>Scheduled deposition date</u>
Gregory Totten	Completion no later than July 31
James Ellison	Completion no later than July 31
Robert Briner	Completion no later than July 31
Glen Kitzmann	Completion no later than July 31
Wayne Simmons	Completion no later than July 31

Ken Valentini	Completion no later than July 31
Judy Coronado	Completion no later than July 31
Vinse Gilliam	Completion no later than July 31
PMQ	Completion no later than July 31
Gene Mecagni (esi)	Completion no later than May 30
Alfredo Valenzuela (esi)	Completion no later than May 30

Other witnesses are scheduled as follows

<u>Witness</u>	<u>Scheduled deposition date</u>
XXXX	To be set (albeit 3 taken I C's case and 1 taken in V's case)
XXXX	

B. Written discovery – First round gone out

(1) Office of the County District Attorney Manual of Policies and Procedures – have/have not been produced/ none requested/none to produce.

13. Discovery Referee. The parties (do not/do) believe that a discovery referee is necessary in this matter at this time.

14. Confidentiality Agreement. None submitted.

15. Pending Motions.

A. October 7, 2014 is reserved for Defendants' Summary Judgment Motion(s).

B. Plaintiff advises there may be discovery motions regarding defendants' lack of preservation of electronically stored information and additional discovery motions will be necessary to obtain discovery from the County. NOTE to counsel; these problems need to be addressed very soon.

C. Apparently Mr. Ho sees a conflict if the Law Offices of Mark Pachowicz and Tron & Tron both represent the plaintiffs and would move to disqualify all counsel for a conflict of interest. The Court has no tentative ruling on such an issue. I will address the issue at the CMC; one resolution is plaintiffs' counsel to simply file an "associated in" notice and leave it to Mr. Ho to file his opposition; another resolution is for Mr. Ho to advise us of the law that supports his conflict theory to give Plaintiff's counsel an opportunity to evaluate the potential consequences in advance; Plaintiff's counsel has asked the Court to require or order him to do so, but it is not likely that the Court would do that and preempt his disqualification motion.

D. There is an issue about whether plaintiff's counsel for Volpei and for Cipollini can attend the depositions scheduled in the "others" case and/or associate into the Volpei case. At the