

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN A. WATTS, ANDREW J. MARKS &
KEVIN W. CRONIN,

Plaintiffs,

V

No. 4:02-CV-0223

HON. RICHARD A. ENSLEN

MICHAEL DAY individually and in his official
capacity as a Court Administrator, Administrator of
the Allegan County Circuit Court,

Defendant.

PROPOSED JOINT FINAL PRETRIAL STATEMENT OF THE PARTIES

A final pretrial conference was held on the 19th day of April, 2006. Appearing for the parties as counsel were: Mark Donnelly for Defendant Mike Day, John Watts for himself, Andrew Marks for himself and Kevin Cronin for himself.

D) EXHIBITS:

A. The following exhibits may be offered by the Plaintiffs:

Exhibit No(s).	Description
1	September 20, 2000, a memorandum from Cronin to Watts, Klein, Antkoviak, Marks & Wolf, regarding meeting.
2	October 25, 2000, a letter from Mr. Day to Watts, requesting poll of attorneys for 2001.
3	October 26, 2000, a letter from Mr. Day from Antkoviak, referencing contract for 2001.
4	October 30, 2000, a letter to Mr. Day from Watts referencing Mr. Day's letter of October 25, 2000, our interest.

5	November 1, 2000, a letter from Day to Antkoviak "it is presumed that all attorneys included in the current contract are interested in continuing..." proposed extension same terms.
6	November 3, 2000, a letter from Antkoviak to Marks, Watts, Cronin, Klein and Wolf, a copy of a letter from Mr. Day suggestion group meets.
7	November 17, 2000, a letter to Mr. Day from Antkoviak referencing Mr. Day's letter of 11/1/2000 and others (two pages).
8	December 21, 2000, a letter to Mr. Day from Antkoviak referencing, previous offer of 12/15/00, was reasonable, reject County's offer, willing to discuss.
9	December 28, 2000, a letter to Antkoviak from Watts referencing, "you were our agent".
10	December 28, 2000, a letter to Mr. Day from Watts referencing, bid for \$10,000.00 dollars less.
11	January 2, 2001, a memo from Marks to Antkoviak understanding a new agreement has been reached to extend current contract for all with a 3% increase.
12	January 4, 2001, a letter to Watts group from Antkoviak saying, "as of January 2, 2001 there was no contract with the County" and not a spokesperson "any longer".
13	January 10, 2001, a letter to Watts from Mr. Day referencing, knowledge of receipt 12/28/00 letter, "we appreciate your offer, it comes subsequent to said agreement".
14	January 10, 2001, a letter to Cronin from Watts referencing discussion with Russ DeMott of January 9th.
15	January 12, 2001, Order from Judge Beach, substituting attorneys.
16	January 12, 2001, a letter hand delivered to Mr. Day from Marks referencing, January 10th letter.
17	January 19, 2001, a letter from Day to Cronin, Marks and Watts from Michael Day referencing bills after 1/12/01.
18	January 19, 2001, a letter from Day to Cronin, Marks and Watts referencing, contract done, closed, Judge Beach made decision.
19	January 24, 2001, a letter from Craig Sewell to John Watts referencing, appointment of new attorneys.
20	January 25, 2001, a letter to Watts, Cronin, and Marks, threatening "criminal' contempt".
21	February 5, 2001, a letter from Debra Meade stating there is no transcript of the January 12th Order proceedings or docket entry.
22	February 6, 2001, a letter from Office of Children's Ombudsman to Watts indicating the standard removal of attorney representing a child.
23	February 12, 2001, a letter to Buitendorp of court of appeals from Judge Beach, revoking his order of January 12, 2001.
24	February 12, 2001, an Order revoking the Order of 1/12/01 by Judge Beach.

25	February 16, 2001, a letter to Judge Beach from Marks disputing his comments of hearing on 2/13/01, that group had not tried to speak with him directly.
26	February 24, 2001, a letter to County Commissioners from Watts, regarding contract.
27	Allegan County Purchasing Policy of 1/1/96-booklet approximately 25 pages.
28	Newspaper ad in The Allegan News, circa Nov 1, 2000, Heidi Wolf endorses Michael Buck in judicial election
29	Newspaper article, front page in The Allegan News, circa January 11, 2001 in which Reporter Dan Kelsey quotes Attorney Peter Antkoviak saying that the legal services contract was "political".
30	Documents from previous contracts.
31	Defendants disclosures in Answers to Interrogatories and Affidavit.
32	Video of Judge Beach at Circuit Court hearing on 2/13/01 concerning removal of Plaintiffs as counsel, stating that Judge Beach supported Michael Buck for Judge, and that Plaintiffs' lower contract offer was "too late".
33	Model Code of Conduct for Court Employees
34	Judicial Ethics Cannon #3.
35	Job description for Allegan County Court Administrator and Friend of the Court.
36	Circuit Court written policy on appointment of counsel and discrimination.
37	Orders of substitution and affidavit of Michael Day regarding actions after January 1, 2001.
38	Plaintiffs' income tax returns 1998-present.
39	Legal Services Contract for Year 2000
40	Legal Services Contract for Year 2001
41	2000 campaign literature of Kevin Cronin for Probate Judge

Defendant objects to plaintiffs' proposed exhibits 19-36 as irrelevant to the sole remaining claim against the sole remaining defendant. Defendant Day also objects to plaintiffs' proposed exhibits 1, 6, 11, 12, 14 and 28-32 for the reasons that they are not adequately

identified and he is unclear what they are. The documents also appear to be hearsay and are otherwise inadmissible.

B. The following exhibits may be offered by the Defendant:

Exhibit No(s).	Description
101	Michael Day's letter to John Watts dated October 25, 2000
102	Peter Antkoviak's October 26, 2000 letter to Michael Day
103	Michael Day's November 1, 2000 letter to Peter Antkoviak
104	John Watts' October 30, 2000 letter to Michael day
105	Peter Antkoviak's November 17, 2000 letter to Michael Day
106	Peter Antkoviak's December 15, 2000 letter to Michael Day outlining 2000 figures
107	Peter Antkoviak's December 21, 2000 letter to Michael Day
108	Michael Day's December 26, 2000 letter to Peter Antkoviak
109	Michael Day's December 26, 2000 letter to Peter Antkoviak
110	John Watts' letter of December 28, 2000 to Michael Day
111	Michael Day's January 10, 2001 letter to John Watts
112	Michael Day's letter of January 19, 2001 to Mr. Cronin, Mr. Marks and Mr. Watts
113	John Watts' January 19, 2001 letter to Michael Day
114	Michael Day's January 23, 2001 letter to John Watts
115	2000 Circuit Court Family Division Legal Services Contract
116	2001 Circuit Court Family Division Legal Services Contract

Plaintiffs object to Defendant's exhibits 101-103, 105-109, 111, 112 and 114 on the grounds of lack of foundation and hearsay.

II. UNCONTROVERTED FACTS:

The parties have agreed that the following may be accepted as established facts, subject to the following caveats offered by the plaintiffs:

A. Plaintiffs contend that each proposed uncontroverted fact that uses the word "court" or "the circuit court" where a person should be referenced, is not agreed to. Thus if "the court" agreed to something, the actual person responsible for agreement should be identified. Rather than repeat this objection in each paragraph below, it is noted here.

B. Plaintiffs contend that where letters or communications are referenced, (both here and as Exhibits) they may or may not have been produced and delivered on the date indicated on the letter. In most cases, the contents of the letters are subject to hearsay objections as to the truth contained therein. Rather than repeat this objection, it is noted here for all relevant entries below.

1. On January 28, 1998, and pursuant to the terms of the existing legal services contract, the circuit court sent a letter to the then current contract attorneys to begin negotiations on a new contract to provide court appointed legal services in the Circuit Court Family Division for the calendar year 1999.

2. In November of 1998 the court entered into a contract for court appointed legal services in the family division for the calendar year 1999 with the same attorneys as in calendar year 1998. The group of attorneys providing court appointed legal services in the Circuit Court Family Division in 1998 and 1999 was comprised of John Watts, Andrew Marks, Kevin Cronin, the Sheridan Law Office, Antkoviak & Antkoviak, P.C. and Burnett, Kastran & Klein, P.C.

3. In January of 1999 the court entered into an agreement allowing the Sheridan Law Office to assign its interest in the 1999 contract to Attorney Heidi Wolf.

4. In May of 1999 the court received a letter from Attorney Kevin Cronin on behalf of all contract attorneys wanting to know the court's intent when the contract expires on December 31, 1999.

5. In July of 1999 an offer was made by court to enter into a contract for calendar year 2000 with the same attorneys with the same terms and conditions as under the 1999 contract.

6. In August of 1999 the court received a letter from Attorney Cronin on behalf of all attorneys accepting the court's offer.

7. In October of 1999 the contract for 2000 was entered into between the court and the same group of attorneys, including Watts, Marks and Cronin.

8. On October 25, 2000 the court sent a letter to Attorney Watts inquiring into the interest of the contract attorneys in a contract for calendar year 2001.

9. On October 26, 2000 Attorney Antkoviak sent a letter to the court on behalf of all attorneys inquiring about 2001 contract negotiations.

10. On October 30, 2000 Attorney Watts sent a letter to the court stating that his desire to be a party to the 2001 contract was "somewhat dependant upon the county's financial offer".

11. On November 1, 2000 the court sent a letter to Attorney Antkoviak proposing a contract for 2001 that included the same attorneys and that contained the same terms and conditions as the prior year's contract.

12. On November 17, 2000 Attorney Antkoviak sent a letter to the court on behalf of all attorneys asking for statistics related to caseloads and appointments so that the attorneys could make a knowledgeable response to the court's offer.

13. Sometime between November 17th and December 15th, the court provided the requested statistics. On December 15, 2000 Attorney Antkoviak sent a letter to the court on behalf of all attorneys acknowledging receipt of statistics and proposing a two year contract for 2001 and 2002 at \$201,000 and \$221,000 respectively.

14. On December 28, 2000 Attorney Watts sent a letter to the court on behalf of the "Watts Group", which offered to provide legal services on contract for Year 2001 at \$10,000 less than the amount proposed to the "Wolf Group".

15. There was no formal bidding process in place on December 27, 2000.

16. In Year 2000, Kevin Cronin campaigned for election as Allegan County Probate Judge.

17. Michael Buck also campaigned for election to the same Probate Judge position.

18. On or about November 5, 2000, Michael Buck won election as Probate Court Judge.

19. The 2001 contract for legal services involves the representation of indigent parents and children in delinquency and child protective proceedings, including cases concerning the legal termination of parental rights.

III. CONTROVERTED FACTS AND UNRESOLVED ISSUES:

The disputed factual issues remaining to be determined and issues of law for the Court's determination are:

CONTROVERTED FACTS:

a. On December 27, 2000 the court sent a letter to Attorney Antkoviak confirming the discussion of December 27th and agreeing to proceed with a contract for 2001.

b. It was the court's understanding and belief that throughout the negotiations for the 2001 contract that Attorney Antkoviak was negotiating on behalf of the entire attorney group.

c. On January 1, 1998, the family division of Circuit Court was created pursuant to MCL 600.1001, *et seq.* At that time the circuit court inherited a multi-year contract for court appointed legal services in effect through December 31, 1998. Probate Judge George Greig and/or Probate Administrator Myrna McNitt negotiated this contract on behalf of the Probate Court.

d. Sometime between December 15th and December 21st the court verbally communicated with Attorney Antkoviak and advised him that the court could go as high as

\$180,250, a 3% increase over 2000, but no higher, as this was the amount that the county was willing to budget.

e. On December 21, 2000 Attorney Antkoviak sent a letter to the court on behalf of all attorneys stating there was a "lack of consensus" among the group members as to the court's offer, so it was rejected.

f. On December 26, 2000 the court sent a letter to Attorney Antkoviak advising him that the court's last offer of \$180,250 for court appointed legal services for 2001 was final. At the time Day drafted and delivered this letter, the court had no knowledge which attorneys in the group were willing to agree to the court's offer and which were not. Day's letter to Attorney Antkoviak made it clear that the court would enter into an agreement with whichever attorneys were willing to agree, as long as the number was sufficient to minimize conflicts.

g. On December 26, 2000, because the termination date of the 2000 contract was fast approaching, Day hand delivered the letter to Attorney Antkoviak at 3:00 p.m. It was at this time Antkoviak advised Day that he had a conference call with Watts, Marks and Cronin and advised them that his firm and the firms of attorney Klein and attorney Wolf were going to accept the court's offer.

h. There was never a position held at anytime by the county, as referenced in Attorney Watts' letter that established a specific number of attorneys or groups of attorneys required to perform the duties associated with the contract.

i. On January 10, 2001 the court sent a letter to Attorney Watts stating that prior to the receipt of his offer, the court had agreed to enter into a contract with the "Wolf group".

j. The court made offers to the attorney group for a contract for 2001 that would have included Attorneys Watts, Marks and Cronin. It was not until the court was notified that its last

offer was rejected by the group as a whole, and that Attorney Antkoviak had informed Attorneys Watts, Marks and Cronin of his intent to accept the contract as a separate group, that the court agreed to the contract with the Wolf group.

k. At no time did the court consider any attorney's political speech, political activity or political association as a factor in the negotiations or the awarding of a contract for legal services. Had Attorneys Watts, Marks and Cronin not rejected the court's final offer of \$180,250, a 3% increase over 2000, as the court was informed and believed, they would have been participants in the 2001 contract. The court never took any action during negotiations to eliminate any attorney or group of attorneys from the contract process. At no time did any judge state that any attorney should be excluded from being a party to the contract for 2001 during the course of negotiations.

l. At no time did Judge Buck or Judge Corsiglia play any role in negotiations or the awarding of a contract for legal services for 2001.

m. It was ultimately Judge Beach who made the decision as to the parties to the 2001 contract and the contract negotiations were conducted by Mr. Day at his direction and with his full knowledge as Chief Circuit Judge.

n. The political activities of Kevin Cronin were never discussed by Attorney Antkoviak with any one from the court as a reason for not including Attorneys Watts, Marks and Cronin in the 2001 contract.

o. Attorney Antkoviak states he has no knowledge concerning plaintiff's allegations that the court encouraged the Wolf Group to submit a separate bid for the 2001 contract in order to award that group for its support of Michael Buck's judicial candidacy.

p. Attorney Antkoviak denies as “utterly false” the allegation that he ever stated that the decision not to award a part of the 2001 contract to Attorneys Watts, Marks and Cronin was a political decision.

q. Defendant Day acknowledges that retaliation against the “Watts Group”, in the awarding of a legal services contract on account of judicial campaign statements or activities of that group’s members would be improper or unlawful, or both.

r. During the Probate Judge campaign of 2000, Kevin Cronin was openly and publicly critical of the administration of the Allegan Circuit Court.

s. During the Probate Judge campaign of 2000, Attorneys Peter Antkoviak and Heidi Wolf publicly supported the election of Michael Buck.

t. The “Watts Group” offer of “\$ 10,000 less” was received by Mr. Day on December 28, 2000, but the legal services contract with the “Wolf Group” was not signed until January 10, 2001.

u. At all times pertinent to this case, Attorneys Watts, Marks and Cronin were licensed to practice law in the state of Michigan and in child protective proceedings and delinquency proceedings before the Allegan County Circuit Court.

v. In Year 2000, Attorneys John Watts and Andrew Marks publicly supported Mr. Cronin’s election as Allegan County Probate Judge.

w. Andrew Marks has been licensed to practice law since 1973.

x. John Watts has been licensed to practice law since 1973.

y. Kevin Cronin has been licensed to practice law since 1979.

z. The only reason for the rejection of the “Watts Group” contract offer on December 28, 2000 was that the offer was “too late”.

aa. Defendant Day never expressed verbally or in writing to any member of the “Watts Group” that he knew of any criticism concerning the legal ability or performance of the Watt’s group members on the indigent legal services contract.

bb. It is easier to resolve conflict of interest appointments for attorneys without additional expense when six attorneys or firms are available than when three attorneys or firms are available.

UNRESOLVED LEGAL ISSUES:

1. Was Day involved in the decision to award the 2001 Circuit Court Family Division Legal Services Contract, or did he act as the court's spokesperson?

2. If Day had involvement in the contract decision, as part of that involvement, did he retaliate against the plaintiffs for their political activities?

3. As bidders or applicants for a new government contract, did the plaintiffs even have a protected interest under the First Amendment?

4. Is Day entitled to either absolute or qualified immunity?

5. Did Day stage the timing of an “acceptance” of this contract so as to deny Plaintiffs a fair opportunity to compete for the contract?

6. Was this contract “entered into” with only a verbal commitment, or does it follow established pattern, practice and legal procedure and require acceptance by a signed, written contract ?

7. Allegan News Reporter Daniel Kelsey may refuse to testify, on the grounds of reporter's privilege or source confidentiality, that Peter Antkoviak stated to him that the legal services contract was "political", given that Antkoviak's statement was published in the Allegan News.

8. If the jury finds that Plaintiffs have proven their claim of first amendment retaliation in a violation of 42 USC 1983, may the jury award punitive damages ?

IV. WITNESSES:

A. Witnesses who will be called by Plaintiffs:

John Watts, 245 Hubbard Street, Allegan, MI 49010; Phone (269) 673-4770

Andrew Marks, 524 E. Broadway, Mt. Pleasant, MI 48858

Kevin Cronin, 2371-130th Ave., Hopkins, MI 49328

Michael Day, Courthouse, 113 Chestnut St., Allegan, MI 49010

George A. Greig, P.O. Box 82, Allegan, MI 49010

Richard Winslow, 430 Walden Dr., Otsego, MI 49078

Velma Pierce, 1488 130th Avenue, Hopkins, MI 49328; Phone (269) 793-7159

Timothy Maat, 1540 Montique, Muskegon, MI 49441

Dan Kelsey, 987 Templeton, Martin, MI 49070; Phone (269) 672-5506

Heidi Wolf, 1244 Lincoln Rd, Allegan, MI 49010; Phone: (269) 673-2105

Pete Antkoviak, 416 Hubbard St, Allegan, MI 49010; Phone: (269) 673-8468

Any other witnesses named by Defendant

B) Non-expert witnesses who may be called by Plaintiff:

Vanessa King, 303 Lincoln Street, Allegan, MI 49010

Mel Bowen & Mrs. Bowen & Kristi Bowen

Dave Nyhof, investigation for address pending.

Andrew White, investigation for address pending.
David Tripp, 206 S. Broadway, Hastings, MI 49058
Mike McGuire, 112 Crestwood, NW, Grand Rapids, MI 49504
Margaret Allen, 2705-6th St., Shelbyville, MI 49344
Kim Kotowski, 207 W. 17th Street, Holland, MI 49423
Robert Pleznac, 622 Lovell St., Kalamazoo, MI 49007-4614
Sandra Bargiel, 203 Front Street, Central City, KY 42330
Chris Harney, investigation for address pending.
Joanne Linington, investigation for address pending.

Defendant Day objects to plaintiffs calling any witnesses other than the original parties to this action because plaintiffs never filed Rule 26(a)(1) disclosures and otherwise failed to identify any witnesses until 4 months after discovery had closed. Even those witnesses disclosed in plaintiffs' tardy discovery responses do not include the following witnesses identified by plaintiffs:

- a. Richard Winslow**
- b. Velma Pierce**
- c. Dan Kelsey**
- d. Vanessa King**
- e. Mel Bowen, Mrs. Bowen and Kristi Bowen**
- f. Dave Nyhoff**
- g. Andrew White**
- h. David Tripp**
- i. Mike McGuire**
- j. Margaret Allen**
- k. Kim Kotowski**
- l. Robert Pleznac**
- m. Sandra Bargiel**
- n. Chris Harney**
- o. Joanne Linington**

- a. Non-expert witnesses that **will** be called by the defendant, except those who may be called for impeachment purposes only, are:

Harry Beach
George Corsiglia

Mike Day
Michael Buck

The above witnesses are all employed at the 48th Circuit Court in Michigan, 113 Chestnut Street, Allegan, MI 49010. Telephone: (269) 673-0300

- b. Non-expert witnesses that **may** be called by the defendant, except those who may be called for impeachment purposes only, are:

Peter Antkoviak
416 Hubbard St
Allegan, MI 49010
Phone: (269) 673-8468

Heidi Wolf
1244 Lincoln Rd
Allegan, MI 49010
Phone: (269) 673-2105

Jon Campbell
1639 Elm Street,
Otsego, 49078
Phone: (269) 694-4632

James Hughes
925 W Ottawa
P.O. Box 30048
Lansing, MI 48909
Phone: (517) 373-9353

- c. Expert witnesses to be called by the plaintiff and defendant except those who may be called for impeachment purposes only, are:

No expert witnesses will be called by any party.

V. DEPOSITIONS AND OTHER DISCOVERY DOCUMENTS:

All depositions, answer to written interrogatories, and requests for admissions, or portions thereof, that are expected to be offered in evidence by the plaintiff and the defendant are:

Plaintiffs may offer Defendant's answers to interrogatories and Affidavit.

The Defendant does not intend to introduce any discovery documents.

VI. LENGTH OF TRIAL:

Defense Counsel estimates the trial will last approximately ____ days, total allocated as follows: 2 days for plaintiff's case; 1 ½ days for defendant's case; 0 days for other parties.

VII. PROSPECTS OF SETTLEMENT: The status of settlement negotiations is: Settlement has been discussed twice at length with the assistance of the court's magistrate judge and it appears that this case will not be settled.

s/Mark E. Donnelly
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s/Andrew J. Marks
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s/Kevin W. Cronin
Kevin W. Cronin
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2371 130th Avenue
Hopkins MI 49328
(269) 793-7764

Dated: May 3, 2006

ORDER

IT IS SO ORDERED.

Date: October 3, 2006

/s/ Ellen S. Carmody
ELLEN S. CARMODY
U.S. Magistrate Judge