

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

PLAINTIFF'S LOCAL RULE 56.1(b)(2) STATEMENT

Plaintiff responds to defendants' Local Rule 56.1(a)(2) as follows:

Contention 1: Joseph Keeling entered the Lake County Jail as an inmate on June 8, 2022, having been picked up on a warrant for missing court on a DUI charge. (Exh. 1, Answer, at ¶ 5;1 Exh. 2, Keeling Dep. at 10:17-11:4.)

RESPONSE: Disputed that plaintiff entered the Jail “as an inmate.” A person arrested on a warrant for missing court is a pretrial detainee. *See Jones v. Barber*, No. 17-CV-07879, 2020 WL 1433811, at *3 (N.D. Ill. Mar. 24, 2020). Otherwise, admit.

Contention 2: Keeling left the Jail just two days later, on June 10, 2022. (**Exh. 3** at Bates 191; see also **Exh. 4**, Kalfas Dep. at 22:16-24.)

RESPONSE: Object to “just” as argumentative but otherwise admits.

Contention 3: Upon entering the Jail, Nurse Gianelle Gregorio met with Keeling for an initial medical intake, a.k.a. "Receiving Screening." (Exh. 1, Answer, at ¶ 6; Exh. 3 at Bates 185-186 and 154-159.)²

RESPONSE: Admit.

Contention 4: [a] Such a screening is part of the jail's ordinary intake process. (Exh. 4, Kalfas Dep. at 23:18-24:12.) [b] Note 2: Jail medical records, which include the "Identification of Special Needs" forms, are records of regularly conducted activity ("business records") of the Lake County Jail. Attached as **Exhibit 7** is an affidavit setting forth the foundation for business records under Fed. R. Evid. 803(6) as it relates to the Jail's medical records.

RESPONSE: [a] Admit as to screening upon entry to the jail.

[b] Disputed. Exhibit 7 is an affidavit from Richard Clouse, the Chief of the Lake County Jail. Mr. Clouse, who has been employed at the Jail for more than 20 years (Clouse Affidavit, ¶ 1), was not identified as a potential witness in defendants' Rule 26 disclosures (Plaintiff's Exhibit 2, attached to Plaintiff's Statement of Additional Facts). Clouse's affidavit should therefore be excluded. In addition, as explained in plaintiff's memorandum of law, the Clouse Affidavit does not establish an adequate foundation for records ostensibly prepared by health care providers. Notwithstanding these objections, plaintiff does not dispute that the standard operating procedure at the Lake County Jail is for medical personal to perform a single intake screening, which includes completing one "Identification of Special Needs" form.

Contention 5: An "Identification of Special Needs" form dated June 8, and with Nurse Gregorio's name atop it, identified that Keeling has a "history of recurrent hypertensive crisis" and noted with checkmarks that he should be given a "lower tier" and "lower bunk" housing assignment. (Exh. 1, Answer, at ¶ 6; see also Exh. 3 at Bates 185.)

RESPONSE: Admit.

Contention 6: Keeling's jail records contain a second "Identification of Special Needs" form dated June 9, atop which Nurse Gina Almas's name appears. (Exh. 3 at Bates 187.)

RESPONSE: Disputed. Plaintiff does not admit the authenticity of the second “Identification of Special Needs” form. Defendants do not present any evidence that the standard operating procedure at the Lake County Jail is to conduct a second medical screening. Defendants have not presented, and are not capable of presenting, any witness who is competent to authenticate this document or who has personal knowledge as to when the document was placed in plaintiff’s jail records. This document is therefore not admissible as a business record. Plaintiff discusses this question of law in his memorandum of law.

Contention 7: Unlike the June 8 form, this June 9 form contains no notations regarding Condition/Disability, nor a housing assignment for a “lower tier” and “lower bunk.” *Id.* 8.

RESPONSE: Plaintiff admits that the June 9 form does not contain this information. Plaintiff disputes that the June 9 form is admissible in any form. Plaintiff discusses this question of law in his memorandum of law.

Contention 8: Nurse Almas has since passed away. (Exh. 4, Kalfas Dep. at 35:5-7.)

RESPONSE: Admit.

Contention 9: Housing units at the Jail are commonly referred to as “pods.” (See Exh. 5, Tyler Dep. at 5:17-7:6; Exh. 4, Kalfas Dep. at 22:16-24; Exh. 2, Keeling Dep. at 80:9-19.)

RESPONSE: Admit.

Contention 10: On June 9, Keeling was moved from the Jail’s booking area to housing unit “1 East,” which is a classification pod where “officers do their interviews, assemble all of the information, and then based upon all of that information, they will find them a more permanent housing location somewhere in the facility.” (Exh. 4, Kalfas Dep. at 20:23-24:21; Exh. 3 at Bates 191; Exh. 2, Keeling Dep. at 81:1-18.)

RESPONSE: Admit.

Contention 11: Cell and bed assignments at the Jail are made by officers in the "Classification Office," taking a variety of information into consideration, including any "Identification of Special Needs" forms, as Deputy Chief Kalfas described in his deposition: [testimony omitted] (Exh. 4, Kalfas Dep. at 26:1-27:12, which is the quoted material above; see also 17:12-15; 25:1- 7:12.)

RESPONSE: Admit.

Contention 12: For Keeling's housing placement in 1 East, an officer in the Classification Office assigned Keeling to a top bunk, which is designated in the Movement History at Bates 191 as "Cell 08 A." (Id.; Exh. 3 at Bates #s 191.)

RESPONSE: Admit.

Contention 13: Classification officers create a "Classification Move Order" when inmates are transferred from one housing unit in the Jail to another, and the "Move Order" that affected Keeling is shown at Bates # 6.

RESPONSE: Admit.

Contention 14: Bates # 6 shows that Keeling was moved (with two other inmates) from the Booking Unit to Housing Unit 1E (1 East), Cell 8, Bunk A: [chart omitted]

RESPONSE: Admit.

Contention 15: The Jail maintains a log system ("eLogger") into which pod officers make entries of regularly occurring activity, such as when people enter or leave a pod. (Exh. 4, Kalfas Dep. At 22:21-23:17.) [NOTE 3: Attached as **Exh. 8** is an affidavit setting forth the foundation for business records under Fed. R. Evid. 803(6) as it relates to the Jail's eLogger system.

RESPONSE: Admit.

Contention 16: The eLogger in fact shows the approximate time that the three inmates arrived on the move order shown above: [chart omitted] Note 3: Attached as **Exh. 8** is an affidavit setting forth the foundation for business records under Fed. R. Evid. 803(6) as it relates to the Jail's eLogger system.

RESPONSE: Admit.

Contention 17: Keeling's movement from Booking to the 1E was typical for Jail inmates. (Exh. 5, Tyler Dep. at 34:13-16; Exh. 4, Kalfas Dep. at 23:18-24:21.)

RESPONSE: Admit.

Contention 18: Cell and bunk assignments are **not** made by the officers working in a pod, but rather by officers working in the classification office. (Exh. 4, Kalfas Dep. at 25:6-28:8.)

RESPONSE: Admit.

Contention 19: A pod officer can respond to an inmate's concerns about his housing assignment as follows: [testimony omitted]

RESPONSE: Admit.

Contention 20: As it pertains to his allegation that he was denied a lower bunk when he arrived in the 1 East Pod, Keeling does not know the name of the person he spoke to. (Exh. 2, Keeling Dep. at 81:19-82:17.

RESPONSE: Disputed. This contention is not supported by the cited portion of plaintiff's deposition, Defendants' Exhibit 2, Keeling Dep. 82:7-17, set out below:

Defense Counsel: The female correction officer, can you describe what she looked like?

Plaintiff: At the time, again, the only recollection I have is just dark hair.

Q: Was she over 50? If you don't know --

Plaintiff: I don't know.

Q: Was she light-skinned, dark skinned?

Plaintiff: I don't know. It's hard because I just watched the video for the first time of this. I don't know.

Contention 21: Keeling does not recall her age. Id.

RESPONSE: Disputed. As set out above, plaintiff does not know whether the officer was more than 50 years of age.

Contention 22: Keeling does not recall her skin color. Id.

RESPONSE: Disputed. As set out above, plaintiff does not know whether the officer was light skinned or dark skinned.

RESPONSE:

Contention 23: Nevertheless, between 3:48 PM, when he arrived in 1 East, and 4:35 PM, when the seizure occurred, Keeling got into the top bunk in his cell, as can be seen in the bodycam video of him having a seizure. Note 5: Attached as **Exhibit 8** is an affidavit setting forth the foundation for business records under Fed. R. Evid. 803(6) as it relates to the Jail's bodycam videos. Keeling also authenticated the video in his deposition at 85:17-87:15. (**Exh. 6** contains the bodycam footage.)

RESPONSE: Plaintiff objects to “nevertheless” as argumentative but otherwise admits.

Contention 24: There was a chair in Keeling's cell. (Id.; Exh. 4, Kalfas Dep. at 28:9-29:5.)

RESPONSE: Disputed. The cited testimony does not establish that there was a chair in plaintiff's cell when he had the seizure (Kalfas Dep. 28:1-4, ECF No. 42 at 66):

Defense Counsel: Do the cells have a chair in them?

Deputy Chief Kalfas: They do.

Contention 25: Keeling never experienced a seizure prior to the seizure shown in the bodycam video. (Exh. 6, Bodycam Footage; Exh. 2, Keeling Dep. at 90:21-91:5 and 92:8-10; Exh. 3 at Bates 171.)

RESPONSE: Admit.

Contention 26: Prior to his seizure on June 9, 2022, no Lake County Jail medical record indicated that Keeling suffered from a seizure condition. [NO CITATION PROVIDED]

RESPONSE: Disputed. Defendants fail to provide any evidentiary basis for this contention.

Contention 27: Keeling testified that he learned about his seizure after an extended period of hallucinations that occurred in the McHenry County Jail. (Exh. 2, Keeling Dep. at 45:15-47:8;49:2-6.)

RESPONSE: Admit.

Contention 28: Keeling related that his symptoms include short-term memory loss and twitching on the left side of his face. (Exh. 2, Keeling Dep. at 44:19-45:1.)

RESPONSE: Admit.

Contention 29: As to the cause of his seizure, Keeling offered only his opinion: "My thought would be the hypertension getting on the top bunk ..." (Exh. 2, Keeling Dep. at 91:20-23.)

RESPONSE: Object to "only" and to setting out the answer without including the question:

Q: Do you have any understanding of what caused the seizure at the Lake County Jail?

(Keeling Dep. 91:20-21, ECF 42 at 37.)

Contention 30: [a] Keeling has no medical training [b] that would lead to his understanding that high blood pressure could cause a seizure. (Exh. 2, Keeling Dep. at 92:1-4.)

RESPONSE: [a] Admit.

[b] Objection: plaintiff's "understanding" that high blood pressure could cause seizures is immaterial, especially when plaintiff's understanding is consistent with the accepted fact that chronic hypertension contributes to late onset of seizure. D.C. Hesdorffer, *Severe, uncontrolled hypertension and adult-onset seizures: a case-control study in Rochester, Minnesota*, available at <https://pubmed.ncbi.nlm.nih.gov/8764811/>.

Contention 31: No doctor has told Keeling what caused his seizure in the Lake County Jail. (Exh. 2, Keeling Dep. at 91:17-19.)

RESPONSE: Objection. This type of hearsay is not admissible on summary judgment and, even if admissible, would not be material.

Contention 32: Keeling cannot identify any individual at the Lake County Jail who took an action that discriminated against him because of his disability.

RESPONSE: Disputed. Defendants fail to provide any evidentiary basis for this contention and the identity of individuals is not material in an ADA claim, where the Sheriff if responsible under respondeat superior. *Smith v. Metro. Sch. Dist. Perry Twp.*, 128 F.3d 1014, 1024 (7th Cir. 1997).

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