

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

NATIONAL FEDERATION OF THE BLIND, *et al.*,

Plaintiffs,

v.

Case No. 3:23cv127

VIRGINIA DEPARTMENT OF CORRECTIONS,

Defendant.

**RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION *IN LIMINE* TO PRECLUDE
DEFENDANT FROM ARGUING THE EVIDENCE OF PLAINTIFFS' CRIMINAL
HISTORY; DISCIPLINARY INFRACTIONS OR OTHER ALLEGED "BAD ACTS";
ALLEGED DRUG USE; ALLEGED GANG
AFFILIATIONS; AND ALLEGATIONS OF MISCONDUCT BY NFB**

The Virginia Department of Corrections ("VDOC" or "Defendant"), by counsel, submits the following Response in Opposition to Plaintiffs' Motion *In Limine* to Preclude Defendant from Arguing the Evidence of Plaintiffs' Criminal History; Disciplinary Infractions or Other Alleged "Bad Acts"; Alleged Drug Use; Alleged Gang Affiliations; and Allegations of Misconduct by NFB. (ECF Nos. 317, 318.)

ARGUMENT

Plaintiffs have filed a Motion *In Limine* wherein they request that the Court prevent the Defendant from putting forth evidence related to the Plaintiffs' Criminal History; Disciplinary Infractions or Other Alleged "Bad Acts"; Alleged Drug Use; Alleged Gang Affiliations; and Allegations of Misconduct by NFB. VDOC does not object to the bulk of the Plaintiffs' Motion. At this time, and unless used for impeachment purposes or the Plaintiffs otherwise open the door, VDOC only intends to introduce evidence demonstrating that the Plaintiffs are convicted felons, which is appropriate in civil cases such as this. *See* Fed. R. Ev. 609 (explaining that such evidence

“must be” admitted). Similarly, VDOC does not intend to introduce any evidence of allegations of misconduct levied against the National Federation of the Blind and does not intend to introduce evidence of the Plaintiffs’ gang affiliation, unless the Plaintiffs themselves open the door to such evidence at trial. However, VDOC does intend to introduce evidence related to the Plaintiffs’ institutional disciplinary convictions, some of which may pertain to drug use, as the Plaintiffs have put this evidence directly at issue in this case. The Plaintiffs are therefore prevented from arguing that this evidence should be excluded.

In their Amended Complaint, the Plaintiffs allege that VDOC fails to provide effective communication in VDOC’s disciplinary process. (Am. Compl., ECF No. 136, ¶ 43.) However, the Plaintiffs’ disciplinary documents demonstrate that, contrary to the Plaintiffs’ allegations, the disciplinary process is not just a paper-based process that is inaccessible to blind inmates as the Plaintiffs allege. The Plaintiffs’ disciplinary documents demonstrate that VDOC staff read the disciplinary charges to all inmates and that an inmate is given the option of requesting an inmate advisor to assist him in the disciplinary hearing. This is evidence that VDOC meets its obligations under the Americans with Disabilities Act (“ADA”) and Rehabilitation Act, which the Plaintiffs have put directly in issue in this case. VDOC is therefore entitled to put on evidence of the Plaintiffs’ disciplinary convictions at trial.

Further, some of the Plaintiffs’ disciplinary convictions are directly relevant to whether they should be allowed certain accommodations for their vision impairment. For instance, evidence shows that one of the Plaintiffs has tampered with a device previously provided at his institution. There is also evidence that another one of the Plaintiffs was in a physical altercation with his inmate caregiver, who was assigned to him for the purposes of assisting him due to his vision impairments. VDOC is entitled to put forth this evidence in rebuttal to the Plaintiffs’

allegations that it is not accommodating the Plaintiffs' vision impairments. As directed by the Fourth Circuit, in ADA cases such as this one, "our context is a prison. [The Court] view[s] the reasonableness of accommodations through the lens of operating a prison." *Richardson v. Clarke*, 52 F.4th 614, 621, 2022 WL 16729415 (4th Cir. 2022). Here, VDOC is entitled to put on evidence that certain ADA accommodations were, or were not, appropriate for the Plaintiff inmates due to their disciplinary histories while incarcerated. Plaintiffs have put this evidence directly at issue in this case.

CONCLUSION

For these reasons and the reasons detailed herein, VDOC respectfully requests that the Court allow VDOC to put of evidence of the Plaintiff's felony convictions and disciplinary convictions at trial.

Respectfully submitted,

VIRGINIA DEPARTMENT OF CORRECTIONS

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of May, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to all counsel of record for the Plaintiff.

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