

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
Clerk's Minutes
Before the Honorable Judith C. Herrera**

Date: May 10, 2007

Courtroom Clerk: Lincoln Sorrell

Court Reporter: Paul Baca

Court in Session: 1:36 p.m./2:14 p.m

Court in Recess: 38 minutes

Type of Proceeding: Call of the Calendar

Attorney(s) Present for Plaintiff(s):

Attorney(s) Present for Defendant(s):

CR 06-538 JH USA v. Quaintance:

Luis Martinez, Amanda Gould

CR 06-538 JH USA v. Quaintance:

Marc Robert (Danuel Quaintance)
Mario Esparza (Mary Helen Quaintance)
Bernadette Sedillo (Joseph Butts)

CV 05-972 JH/DJS Couture v. APS, et al.

Gail Stewart

CV 05-972 JH/DJS Couture v. APS, et al.

Michael Carrico, Brian Nichols

CV 03-727 JH/RHS Union Standard v. Hobbs

Scott Hatcher

CV 03-727 JH/RHS Union Standard v. Hobbs

Gregory Biehler

Proceedings:

Court in Session:

1:36 p.m.

Court in session; Court addresses USA v. Quaintance, et al.; attorney appearances; Motion to continue addressed by the Court. Motion notes that Butts' opposes the motion. Ms. Sedillo addresses the court re: her opposition to the motion to continue; Ms. Sedillo reverses herself and does not oppose the motion given that Mr. Robert has been taken off the case. Court grants the motion and moves the case to June 18 on a trailing calendar. Motion granted.

1:41 p.m.

Ms. Sedillo: very helpful if we have rulings on the motions. Court: motions have been decided; court gives verbal rulings. Quaintance lawyers excused.

1:43 p.m.

Court addresses civil cases. Court addresses *Union Standard v. Hobbs*; attorney appearances. Court: what about stipulations? Greg Biehler: stipulated to limit this trial to one issue. Hatcher: Mobile equipment and indemnity issues may be taken up but even with added issue the trial should take only a day. Biehler and Hatcher would like May 21. Court to Couture counsel: what are bad dates? Stewart: any dates ok. Carrico: would like not to go on the week of May 21.

1:49 p.m.

Court: if there is an IDEA hearing of 1-2 days in Couture, we could do it in the week of May 21. We could set *Union Standard v. Hobbs* on May 21. Pick jury on Tuesday, May 29 for jury part of Couture. Doable for both sides. Ms. Stewart has appellate briefs due that week. *Union Standard* will go to trial May 21, 2007. Jury trial set May 29, 2007.

- 1:53 p.m.** Bench portion of Couture will be held May 22-23 or May 23-24. Will have ruling out soon on the supplemental evidence issue. Court: had hoped to have written decisions on motions out by now. Decisions may be out early next week. Court can put out oral decisions: QI--Brady, Willis Flippo Motion granted in part and denied in part. P/Motion for Partial SJ--denied; APSs motion § 1983 granted in part and denied in part. Municipal liability claim (waiver teachers)--granted; APS motion municipal liability claim (principals responsible) -granted. APS motion (appropriate rooms)--denied. APS (physical restraint)--denied. Defts motion tort claim stat. limitations--denied.
- 1:58 p.m.** Carrico: Qualified immunity ruling may throw a monkey wrench in schedule; may pursue interlocutory appeal. Please place urgency on IDEA claims motion so that ruling could be out well in advance of hearing. Objections to exhibits: request opportunity to present objections and provide some more information. Court: if objections to exhibits, will deal with it in trial.
- 2:03 p.m.** Ms. Stewart: could witness from Texas be excused from IDEA hearing. Defendants objects; would like to examine. Carrico: need supplemental evidence ruling as to whether certain witnesses will be called.
- 2:07 p.m** Witness list deadline extended to Thurs. 5-17.
- 2:08 p.m.** Stewart: does court want jury to have notebooks? Court: does not mandate it; can use courtroom technology but will leave that up to lawyers.
- 2:08 p.m.** Carrico: can we have practice run of equipment? Court: yes.
- 2:10 p.m.** Court will allow amendment of jury instruction to conform with rulings.
- 2:11 p.m.** Stewart: demonstrative exhibit that Mr. Carrico has not seen. Can I bring it in and show court ahead of time? Court: yes, I would like to review it.
- 2:13 p.m.** Stewart: out-of-state witness problem in potential IDEA hearing--can we depose before. Carrico: No objection.
- 2:14 p.m . Court in recess.