

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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STEVEN A. AVERY,

Plaintiff,

v.

Case No. 04-C-0986

MANITOWOC COUNTY,  
THOMAS H. KOCOUREK, individually  
and in his official capacity as  
Sheriff of Manitowoc County,

and

DENIS R. VOGEL, individually  
with respect only to his executive, administrative  
and advice and counsel functions  
and in his official capacity as  
District Attorney of Manitowoc County,

Defendants.

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**PARTIES' JOINT RULE 26(f) REPORT**

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This matter is set for a telephone scheduling conference on March 3, 2005, at 9:00 a.m. Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, counsel for the parties met telephonically on February 8, 2005, to discuss the matters set forth in this report. Walter F. Kelly and Stephen M. Glynn participated on behalf of plaintiff Avery. Amy J. Doyle participated on behalf of defendants Kocourek and Manitowoc County. Amanda J. Kaiser participated on behalf of defendants Vogel and Manitowoc County. Timothy A. Bascom participated on behalf of defendant Manitowoc County.

A. Nature and Basis of Claims and Defenses

Plaintiff alleges that defendants denied his constitutional rights to due process and equal protection in connection with his conviction and imprisonment for felony crimes of sexual assault, attempted murder, and false imprisonment, for which DNA evidence ultimately exonerated him. Plaintiff brings his claims pursuant to 42 U.S.C. §§ 1983 and 1985(2). Defendants have denied any constitutionally impermissible conduct or liability to plaintiff and have alleged various affirmative defenses, including immunity.

B. Possibilities for a Prompt Settlement or Resolution

The parties have discussed settlement and alternative dispute resolution methods. These discussions are presently ongoing, and the parties will inform the Court of their status on or before April 4, 2005.

C. Rule 26(a)(1) Initial Disclosures

The parties agree to exchange their Rule 26(a)(1) disclosures on or before March 1, 2005. The parties have agreed to mutual document exchanges of voluminous documents presently in their possession.

D. Proposed Discovery Plan

1. The parties propose a bifurcation of discovery, with fact discovery concerning all liability issues to occur first, followed by dispositive motions as to liability, prior to discovery on damage issues. Fact discovery regarding liability issues shall be completed on or before September 6, 2005.

2. On or before September 13, 2005, plaintiff shall declare whether expert testimony will be presented in support of his claims, with regard to liability (the identity of any experts need not be disclosed, but the fact that expert testimony will be utilized

shall be declared). If plaintiff declares that he will not present expert testimony, then on or before September 20, 2005, defendants shall declare whether expert testimony will be presented in support of their defenses, with regard to liability. If no party declares his or its intent to use expert witnesses on any of the liability issues, then motions for summary judgment on the liability issues shall be filed on or before October 20, 2005.

3. Expert Witness Disclosures.

a. If plaintiff declares that he will present expert testimony, plaintiff shall have until October 13, 2005, within which to disclose experts and provide expert reports as required by Rule 26(a)(2) of the Federal Rules of Civil. Thereafter, defendants shall have until December 12, 2005, within which to disclose experts and provide expert reports. Expert witness depositions will be completed by the parties on or before February 17, 2006.

b. If plaintiff declares that he will not present expert testimony, on or before September 20, 2005, defendants shall declare whether expert testimony will be presented in support of their defenses with regard to liability. If defendants declare that they will present expert testimony, defendants shall have until October 20, 2005, within which to disclose experts and provide expert reports as required by Rule 26(a)(2) of the Federal Rules of Civil. Thereafter, plaintiff shall have until December 19, 2005, within which to disclose experts and provide expert reports. Expert witness depositions will be completed by the parties on or before February 17, 2006.

4. If any of the parties have used expert witnesses on any of the liability issues, then motions for summary judgment on the liability issues shall be filed on or before March 17, 2006.

5. No discovery on damage issues shall be conducted during the pendency of any summary judgment motions on the liability issues. If summary judgment is denied in whole or in part, then discovery on damage issues shall be completed by the parties within 90 days of the date of the Court's decision on summary judgment.

6. Counsel anticipate that plaintiff and/or defendants may need to take more than the 10 depositions allowed by Rule 30(2)(A) of the Federal Rules of Civil Procedure. Counsel will attempt to resolve any issue regarding the limitation on depositions, and if no resolution is possible, the party seeking discovery that exceeds the limitation will move the Court for an order permitting the additional discovery.

7. Other Items.

a. Amendments to Pleadings / Joinder of Parties. Defendants have affirmatively defended that plaintiff has failed to join indispensable parties; discussions are underway concerning that affirmative defense. If agreement is reached resolving all issues concerning that affirmative defense, the parties will notify the Court by May 3, 2005; if agreement is not reached resolving all issues concerning that affirmative defense, plaintiff will submit his motion to strike on or before June 3, 2005. The parties propose that they be given until July 8, 2005, to amend the pleadings or join additional parties without leave of court. If, after July 8, 2005, counsel decide that a subsequent amendment is appropriate, counsel will attempt to obtain agreement from opposing counsel, and if no such agreement is reached, make an appropriate motion.

b. The timing of filing of pretrial disclosures under Rule 26(a)(3) of the Federal Rules of Civil Procedure shall be governed by the Court's Order controlling

the case, which the parties anticipate will be entered after dispositive motions on liability are decided.

c. The Court may reach counsel on March 3, 2005, for the telephone scheduling conference as follows:

Walter F. Kelly 414-271-6989

Stephen M. Glynn 414-221-9600

Raymond J. Pollen 414-271-7722

Amanda J. Kaiser 608-283-1750

Timothy A. Bascom 414-476-0800

Dated this 24th day of February, 2005 at Milwaukee, Wisconsin.

\*s/Walter F. Kelly

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\* Counsel have agreed that Mr. Kelly's signature represents the agreement of all counsel of record in the case.