

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

Alexander Gray,)	
)	
Plaintiff,)	Case No. 23-cv-1931
)	
v.)	Hon. Steven C. Seeger
)	
City of Evanston, et al.,)	
Defendants.)	
_____)	

JOINT INITIAL STATUS REPORT UNDER RULE 26(f)

The parties have conferred as required by Rule 26(f), and jointly submit the following discovery plan. *See* Fed. R. Civ. P. 26(f)(2); Fed. R. Civ. P. 26(f)(3); Fed. R. Civ. P. 16(b). The parties understand that the Court will enter a scheduling order under Rule 16(b)(1), and that the Court will modify any such schedule “only for good cause.” *See* Fed. R. Civ. P. 16(b)(4).

I. Nature of the Case

- A. Identify the attorneys of record for each party. Note the lead trial attorney and any local counsel.
- Plaintiff is represented by Kenneth N. Flaxman (lead trial counsel) and Joel A. Flaxman.
- Defendants are represented by Nicholas Cummings, Evanston Corporation Counsel (lead trial counsel) and Alexandra Ruggie, Deputy City Attorney.
- B. State the basis for federal jurisdiction.
- Plaintiff brings claims under 42 U.S.C. § 1983; the basis for federal jurisdiction is 28 U.S.C. § 1343
- C. Provide a short overview of the case in plain English (five sentences or less).
- The individual defendants, all Evanston police officers, responded to a radio message that an anonymous caller had reported “a white male, approximately 5 feet tall to 6 feet tall, in a dark coat and jeans” carrying a handgun north of the beach at 501 Sheridan Square in the City of Evanston.
- Kubiak pointed his firearm at plaintiff, ordered him to raise his hands and to get on the ground.
- Other officers arrived at the scene; several officers handcuffed and searched plaintiff.

Plaintiff contends that the officers pointed their firearms at plaintiff, subjecting him to excessive force and that a driving force for the officers' actions is the deadly force policy of the City of Evanston.

Defendants deny that the officers engaged in any wrongdoing, deny any of the City's policies are unconstitutional, and assert that any force used was reasonable under the circumstances.

- D. Describe the claims asserted in the complaint and the counterclaims and/or third-party claims and/or affirmative defenses.

Plaintiff contends that the actions of defendants abridged his Fourth Amendment right to be free from unreasonable search and seizure. There is no counterclaim or third-party claim. The officer defendants raise the affirmative defense of qualified immunity.

- E. What are the principal factual issues?

1. Was the plaintiff in fear of his life when the officers pointed their firearms at him?
2. Did the officer defendants have a reasonable basis to engage in the conduct alleged by plaintiff?
3. Was Evanston's excessive force policy a moving force of any constitutional violation?

- F. What are the principal legal issues?

1. Is Evanston's excessive force policy unconstitutional, as applied to the facts of this case?
2. May police officers point firearms and search a non-white person in response to a dispatch message that a white male had been seen carrying a gun?
3. Are any of the individual officers entitled to qualified immunity?

- G. What relief is the plaintiff(s) seeking? Quantify the damages, if any. (A ballpark estimate is acceptable – the purpose is simply to give the Court a feel for the case. This estimate will not be admissible.).

Plaintiff seeks \$1,500,000, slightly more than the damages paid by the City of Evanston to resolve a similar case in 2022, *Crosby v. City of Evanston*, Circuit Court of Cook County, 16 L 10029 This demand is commensurate with the traumatic event for a law abiding African-Citizen who, while walking in a park, is forced at gunpoint and under penalty of death to raise his hands, get on the ground, be handcuffed, and submit to an unjustified search. Plaintiff also seeks injunctive relief to require changes in Evanston's deadly force policy.

- H. Have all of the defendants been served, or waived service of process?

All defendants have been served and have answered the amended complaint.

II. Discovery

- A. Propose a discovery schedule. Include the following deadlines: (1) the mandatory initial discovery responses; (2) any amendment to the pleadings to add new claims, or new parties; (3) service of process on any “John Doe” defendants; (4) the completion of fact discovery; (5) the disclosure of plaintiff’s expert report(s); (6) the deposition of plaintiff’s expert; (7) the disclosure of defendant’s expert(s); (8) the deposition of defendant’s expert; and (9) dispositive motions. ***Fill in the blanks, below.***

Also, submit a Word version of the proposed scheduling order to Judge Seeger’s proposed order inbox, Proposed_Order_Seeger@ilnd.uscourts.gov. The template is available on the Court’s webpage.

Event	Deadline
Amendment to the pleadings	November 13, 2023
Completion of Fact Discovery	December 15, 2023
Disclosure of Plaintiff’s Expert Report(s)	January 15, 2024
Deposition of Plaintiff’s Expert	February 19, 2024
Disclosure of Defendant’s Expert Report(s)	March 18, 2024
Deposition of Defendant’s Expert	April 22, 2024
Disclosure of Plaintiff’s Rebuttal Report	May 13, 2024
Dispositive Motions	June 13, 2024

- B. How many depositions do the parties expect to take?
Plaintiff expects to take ten depositions: the individual defendants, other officers who were on the scene, and a Rule 30(b)(6) deposition of the City of Evanston. Defendant will depose plaintiff.
- C. Do the parties foresee any special issues during discovery?
No.
- D. Rule 26(f)(2) requires the parties to propose a discovery plan. *See* Fed. R. Civ. P. 26(f)(2). Rule 26(f)(3), in turn, provides that a “discovery plan must state the parties’ views and proposals” on six different topics. *See* Fed. R. Civ. P. 26(f)(3). Have the parties discussed a discovery plan – including all of the topics – as required by Rule 26(f)(3)? If so, do the parties propose anything?

If the parties do make any proposals, be sure to include them in the proposed scheduling order that will be sent to Judge Seeger's proposed order inbox.

The parties have discussed these matters.

Plaintiff proposes the schedule include time for an expert rebuttal report.

III. Trial

- A. Have any of the parties demanded a jury trial?

Yes.

- B. Estimate the length of trial.

Three days.

IV. Settlement, Referrals, and Consent

- A. Have any settlement discussions taken place? If so, what is the status?
Has the plaintiff made a written settlement demand? And if so, did the defendant respond in writing? (Do not provide any particulars of any demands or offers that have been made.)

Defendant is considering the written settlement demand plaintiff made on June 7, 2023.

- B. Do the parties request a settlement conference at this time before this Court or the Magistrate Judge?

No.

- C. Have counsel informed their respective clients about the possibility of proceeding before the assigned Magistrate Judge for all purposes, including trial and entry of final judgment? Do all parties unanimously consent to that procedure? The Court strongly encourages parties to consent to the jurisdiction of the Magistrate Judge.

Yes and no.

V. Other

- A. Is there anything else that the plaintiff(s) wants the Court to know? (Please be brief.)

No.

- B. Is there anything else that the defendant(s) wants the Court to know? (Please be brief.)

/s/ Kenneth N. Flaxman
Kenneth N. Flaxman
ARDC No. 08830399
Joel A. Flaxman
200 South Michigan Ave Ste 201
Chicago, Illinois 60604
(312) 427-3200
Attorneys for Plaintiffs

NICHOLAS E. CUMMINGS
Corporation Counsel

/s/ Alexandra Ruggie
Alexandra Ruggie
Deputy City Attorney
City of Evanston Law Department
Morton Civic Center
2100 Ridge Ave
Evanston, IL 60201
(847) 866 - 2937
aruggie@cityofevanston.org
Attorney for Defendants