

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

JOSEPH KEELING,)	
)	
Plaintiffs,)	Case No. 23-cv-3442
)	
v.)	Hon. Steven C. Seeger
)	
SHERIFF OF LAKE COUNTY,)	
LAKE COUNTY, ILLINOIS,)	
and LAKE COUNTY CORRECTIONAL)	
OFFICER DOE,)	
)	
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 attorney) and Joel A. Flaxman. Defendants are represented by Lake County Assistant State’s Attorneys Melanie K. Nelson (lead trial attorney) and Stephen J. Rice.

- B. State the basis for federal jurisdiction.

Plaintiff invokes the jurisdiction of the Court under 28 U.S.C. § 12133 (ADA claim against Sheriff in his official capacity), 29 U.S.C. § 794a(a)(2) (against the Sheriff in his official capacity), 28 U.S.C. § 1343 (§ 1983 claim against Officer Doe) and 28 U.S.C. § 1367 (supplemental state law claim against Officer Doe and the Sheriff on respondeat superior).

- C. Provide a short overview of the case in plain English (five sentences or less).

Plaintiff entered the Lake County Jail as a pre-trial detainee on June 8, 2022. During medical screening on admission to the Lake County Jail, Registered Nurse Gregorio correctly determined

that plaintiff had a medical condition known as “recurrent hypertensive crisis” that required, *inter alia*, that he be housed at the Jail in a lower bunk on a lower tier.

Plaintiff alleges, and defendants deny: Defendant Doe refused to assign plaintiff to a lower bunk, causing Plaintiff to have a seizure and incur personal injuries.

Defendants deny that plaintiff was entitled to a low bunk assignment and deny that his placement into an upper bunk caused him any cognizable injury. Defendants further deny plaintiff’s allegations related to subsequent medical malpractice at the McHenry County Jail.

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

ADA and RA claim against Sheriff in his official capacity, § 1983 claim against Officer Doe, supplemental state law claims of willful and wanton conduct against Officer Doe individually and the Sheriff on *respondeat superior*.

Defendants have not yet filed a responsive pleading, pending their motion to dismiss. Defendants view the complaint as asserting a medical malpractice claim; plaintiff disagrees. If the Court in its ruling agrees with defendants’ reading of the complaint, and does not dismiss any medical malpractice claim, defendants may seek to join Wellpath, the jail’s medical provider, as a third-party defendant. Defendants anticipate asserting the affirmative defense of qualified immunity. and, as to issues the plaintiff raises for which he had time to use a jail’s administrative remedies, the failure to exhaust those remedies under 42 U.S.C. 1997e.

- E. What are the principal factual issues?

Did defendant Doe refuse to assign plaintiff to a lower bunk and, if so, did this misconduct amount to a failure to accommodate under the ADA and/or the Rehabilitation Act, or violate plaintiff’s clearly established constitutional rights, or otherwise cause plaintiff harm?

- F. What are the principal legal issues?

Plaintiff asserts that there will not be any disputed legal issues.

Defendants assert that the case presents the following legal issues:

1. Whether plaintiff can maintain both an ADA claim and a § 1983 claim.
2. Whether plaintiff has or can meet pleading requirements for a medical malpractice claim.
3. Whether defendants were deliberately indifferent to plaintiff’s condition under the 14th Amendment.
4. Whether the plaintiff exhausted the available administrative remedies at either the Lake County or McHenry County jails.

5. Whether any individual Defendant in this case—whether currently named or later added—committed an act or omission under circumstances in which a reasonable officer in his or her position would have been aware of violating clearly established law or the Plaintiff’s constitutional rights.

G. What relief is the plaintiff(s) seeking?

Plaintiff is seeking monetary damages, which will be more clearly quantifiable as discovery proceeds. Plaintiff’s counsel estimates that the total damages will be less than \$100,000.

H. Have all of the defendants been served, or waived service of process? If not, identify the defendants that have not received service.

Defendant Doe has not yet been identified. Defense counsel for the Lake County entities are attempting to identify the individual who assigned plaintiff to his bunk and can report progress on this at the first status hearing. The other defendants have waived service of process and have appeared and filed a motion to dismiss.

II. Discovery

A.

Event	Deadline
Amendment to the pleadings	28 days following ruling on Motion to Dismiss
Service of process on any “John Does”	10/31/23
Completion of Fact Discovery	Written discovery by 12/31/23 Depositions by 3/31/24
Disclosure of Plaintiff’s Expert Report(s)	4/30/24
Deposition of Plaintiff’s Expert	5/31/24
Disclosure of Defendant’s Expert Report(s)	7/15/24
Deposition of Defendant’s Expert	8/15/24
Dispositive Motions	9/15/24

B. How many depositions do the parties expect to take?

The parties expect 4–8 depositions, depending on whether individuals from the McHenry County jail need to be deposed and the breadth of medical discovery.

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?

The parties have discussed a proposed discovery plan. The scope of discovery will change significantly if individuals from the McHenry County jail need to be deposed and the scope of plaintiff’s claimed injuries. Due to the fact that the complaint relates to Plaintiff’s admission to the Lake County Jail over only 1-2 days, the parties do not anticipate extensive document discovery (electronic or otherwise).

The parties anticipate making initial 26(f) disclosures by 9/30/23.

Pursuant to Rule 26(c) the parties anticipate needing to enter a HIPAA protective order to obtain plaintiff’s medical records.

III. Trial

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

All parties have demanded a jury trial.

B. Estimate the length of trial.

At the present time, the parties estimate that trial will take four days.

IV. Settlement, Referrals, and Consent

A. Have any settlement discussions taken place?

No. The parties will revisit settlement after the court’s rules on the pending motion to dismiss, and as discovery proceeds. Plaintiff has not made a written settlement demand.

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.

Counsel, after conferring with their respective clients, report that the parties do not unanimously consent to trial before a Magistrate Judge.

V. Other

- A. Is there anything else that the plaintiff(s) wants the Court to know? No.
- B. Is there anything else that the defendant(s) wants the Court to know? No.

Eric F. Rinehart
STATE'S ATTORNEY OF LAKE COUNTY
Melanie K. Nelson (#6288452)
Stephen J. Rice (#6287192)
Assistant State's Attorney
18 N. County St., Waukegan, IL 60085
(847) 377-3099; srice@lakecountyil.gov
mnelson@lakecountyil.gov
*Attorneys for the Lake County Sheriff and
Lake County, Illinois*

Respectfully submitted,
ERIC F. RINEHART
State's Attorney of Lake County

By: /s/Stephen J. Rice
Assistant State's Attorney

/s/ Kenneth N. Flaxman (with consent)
Kenneth N. Flaxman
ARDC No. 830399
Joel A. Flaxman
200 S Michigan Ave Ste 201
Chicago, IL 60604-2430
(312) 427-3200
knf@kenlaw.com
Attorneys for plaintiff