

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-CV-2317-REB-KLM

BERNARD KENNETH MYERS,

Plaintiff,

v.

CITY OF LOVELAND, COLORADO,

Defendant.

RECEIVED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

OCT 18 2012

JEFFREY P. COLWELL
CLERK

SCHEDULING ORDER

**1. DATE OF CONFERENCE
AND APPEARANCES OF COUNSEL AND PRO SE PARTIES**

The conference was conducted on October 5, 2012, by telephone conference. Plaintiff *pro se* Bernard Kenneth Myers, 603 East 17th Street, Big Spring, Texas 79720, telephone: 432-935-6425, and attorney for Defendant the City of Loveland, Colorado ("City"), Kent N. Campbell of Wick & Trautwein, LLC, PO Box 2166, Fort Collins, CO 80522, telephone 970-482-4011, participated.

2. STATEMENT OF JURISDICTION

Plaintiff, in his Complaint, alleges diversity jurisdiction pursuant to 28 U.S.C. §1332. City denies that the Complaint states claims upon which relief may be granted, and therefore denies that the amount in controversy confers subject matter diversity jurisdiction or any other jurisdictional bases.

3. STATEMENT OF CLAIMS AND DEFENSES

a. Plaintiff(s): Plaintiff alleges statutory and constitutional civil rights violations based upon the United States and Colorado Constitutions, and, in particular, the Fifth and Fourteenth Amendments to the U.S. Constitution, 42 U.S.C. §§1981, 1983, 1985, 1986 and 14141, 18 U.S.C. §§241 and 242, and based upon theories of outrageous conduct, negligent supervision and negligent training, and seeks attorneys' fees pursuant to 42 U.S.C. §1988. Plaintiff seeks unspecified compensatory damages in the amount of \$8,816,000 from City.

b. Defendant(s): Failure to state claims upon which relief may be granted and lack of subject matter jurisdiction.

4. UNDISPUTED FACTS

The following facts are undisputed: The following persons were employed by City at the time of the incidents alleged to have occurred involving them: Elizabeth Markham, Dee Ann Beaman, Alice Jane Garland, Dana Woodhams and Deborah Lawrence.

5. COMPUTATION OF DAMAGES

Plaintiff seeks unspecified compensatory damages from City of \$8,816,000 consisting of economic and non-economic damages.

6. REPORT OF PRECONFERENCE DISCOVERY AND MEETING UNDER FED.R.CIV.P. 26(f)

a. Date of Rule 26(f) meeting: October 5, 2012.

b. Names of each participant and party he/she represented: Plaintiff *pro se* Bernard Kenneth Myers and Kent N. Campbell, Wick & Trautwein, LLC, attorney of record for City.

c. Statement as to when Rule 26(a)(1) disclosures were made or will be made: October 19, 2012.

d. Proposed changes, if any, in timing or requirement of disclosures under Fed. R. Civ. P. 26(a)(1): None.

e. Statement concerning any agreements to conduct informal discovery: No agreement, pending ruling by the Court on City's Motion to Dismiss.

f. The parties agree to utilize telephone depositions, if desired, to reduce costs.

g. The parties do not anticipate that their claims or defenses will involve extensive electronically stored information or that a substantial amount of disclosure or discovery will involve information or records maintained in electronic form.

h. The parties have discussed the possibilities for promptly settling or resolving the case. A settlement demand has been made and promptly conveyed to City.

7. CONSENT

All parties have not consented to the exercise of jurisdiction of a magistrate judge.

8. DISCOVERY LIMITATIONS

a. No modifications are proposed to the presumptive numbers of depositions or interrogatories contained in the Federal Rules.

b. The presumptive limitations as set forth in the Federal Rules should apply to the length of depositions.

c. The parties jointly propose that requests for production and requests for admission be limited to 25 each per side, including discrete subparts.

d. Other Planning or Discovery Orders: No opposed discovery motions are to be filed with the Court until the parties comply with D.C.COLO.LCivR. 7.1A. If the parties are unable to reach agreement on a discovery issue after conferring, they shall arrange a telephone hearing with Magistrate Judge Mix regarding the issue. Both of these steps must be completed before any contested discovery motions are filed with the Court.

9. CASE PLAN AND SCHEDULE

- a. Deadline for Joinder of Parties and Amendment of Pleadings: December 13, 2012.
- b. Discovery cut-off: February 26, 2013.
- c. Dispositive Motion Deadline: March 28, 2012.
- d. Expert Witness Disclosure:
 1. The parties do not currently anticipate utilizing expert testimony, although both parties reserve the right to designate experts, which, if used, would probably consist of document examiners.
 2. The parties each propose the use of one expert witness per discipline.
 3. The parties shall designate all experts and provide opposing counsel and any pro se parties with all information specified in Fed. R. Civ. P. 26(a)(2) on or before December 31, 2012.

4. The parties shall designate all rebuttal experts and provide opposing counsel and any pro se party with all information specified in Fed. R. Civ. P. 26(a)(2) on or before January 31, 2013.

e. Plaintiff does not anticipate deposing anyone. City anticipates deposing Plaintiff and reserves the right to depose additional non-party witnesses.

f. Deadline for Interrogatories: 30 days before discovery deadline.

g. Deadline for Request for Production of Documents and/or Admissions: 30 days before discovery deadline.

10. DATES FOR FURTHER CONFERENCES

a. Status conferences will be held in this case at the following dates and times: _____.

b. A final pretrial conference will be held in this case on _____ at _____ o'clock ___ m. A Final Pretrial Order shall be prepared by the parties and submitted to the court no later than seven (7) days before the final pretrial conference.

11. OTHER SCHEDULING MATTERS

a. Discovery or scheduling issues, if any, on which counsel and Plaintiff pro se after a good-faith effort were unable to reach an agreement: none.

b. Anticipated length of trial and whether trial is to the court or jury: 2-3 days, depending upon whether court trial or jury trial. Plaintiff seeks to reserve the right to demand a trial to jury. City does not demand a jury trial.

c. Identify pretrial proceedings, if any, that the parties believe may be more efficiently or economically conducted in the District Court's facilities at 212 N. Wahsatch Street, Colorado Springs, Colorado; Wayne Aspinall U.S. Courthouse/Federal Building, 402 Rood Avenue, Grand Junction, Colorado; or the U.S. Courthouse/Federal Building, 103 Sheppard Drive, Durango, Colorado; none.

12. NOTICE TO COUNSEL AND PRO SE PARTIES

The parties filing motions for extension of time or continuances must comply with D.C.COLO.LCivR 6.1D. by submitting proof that a copy of the motion has been served upon the moving attorney's client, all attorneys of record, and all *pro se* parties.

Counsel will be expected to be familiar and to comply with the Pretrial and Trial Procedures or Practice Standards established by the judicial officer presiding over the trial of this case.

With respect to discovery disputes, parties must comply with D.C.COLO.LCivR 7.1A.

In addition to filing an appropriate notice with the clerk's office, a *pro se* party must file a copy of a notice of change of his or her address or telephone number with the clerk of the magistrate judge assigned to this case.

In addition to filing an appropriate notice with the clerk's office, counsel must file a copy of any motion for withdrawal, motion for substitution of counsel, or notice of change of counsel's address or telephone number with the clerk of the magistrate judge assigned to this case.

13. AMENDMENTS TO SCHEDULING ORDER

This Scheduling Order may be altered or amended only upon a showing of good cause.

BY THE COURT:

Kristen L. Mix,
United States Magistrate Judge

APPROVED:

Bernard Kenneth Myers
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Big Spring, TX 79720
432-935-6425
Pro Se Plaintiff

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