

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED

FEB 09 1999 EE

CLAUDIA NAVARRO PINEDA,
INDIVIDUALLY AND AS
REPRESENTATIVE OF THE ESTATE
OF PEDRO OREGON NAVARRO;
ANA ISABEL LORES,
AS NEXT FRIEND OF ASHLEY,
MINOR DAUGHTER OF PEDRO
OREGON NAVARRO;
BLANCA LIDIA VIERA, AS NEXT
FRIEND OF BELINDA, MINOR
DAUGHTER OF PEDRO OREGON
NAVARRO; ROGELIO OREGON
NAVARRO; SALVADOR LOPEZ; AND
NELLY MEJIA,

Plaintiffs

v.

CITY OF HOUSTON;
D. H. STROUSE; D.R. BARRERA;
P.A. HERRADA; D.R. PERKINS;
L.E. TILLERY; JAMES R. WILLIS

Defendants

MICHAEL N. MILBY, CLERK OF COURT

CAUSE NO. H-98-3877

TRIAL BY JURY REQUESTED

JOINT DISCOVERY/CASE MANAGEMENT PLAN

1. State where and when the meeting of the parties required by Rule 26(f) was held, and identify the counsel who attended for each party.

The Rule 26(f) meeting was held on February 5, 1999 at the offices of Richard Warren Mithoff. Janie Jordan, Paul Nugent, Roger Townsend and Russell Post were in attendance for Plaintiffs; Robert L. Cambrice, Andrea Chan and Elizabeth Ferrell were in attendance for Defendant City of Houston; Fred A. Keys was in attendance for Defendant Darrell Strouse; Duncan Neblett was in attendance for Defendant David Perkins; and Robert Thomas was in attendance for Defendants David R. Barrera, Pete A. Herrada, Lamont E. Tillery and James R. Willis.

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2. List the cases related to this one that are pending in any state or federal court, with the case number and court.

1. **Cause No. 0795867; *State of Texas vs. James Robert Willis*; In the County Criminal Court #8, Harris County, Texas**

2. **Ongoing investigation by the U.S. Department of Justice and the FBI.**

3. Specify the allegation of federal jurisdiction.

Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 and 1343.

4. Name the parties who disagree and the reasons.

All parties agree on the jurisdiction of this court.

5. List anticipated additional parties that should be included, when they can be added, and by whom they are wanted.

None known at this time.

6. List anticipated interventions.

None known at this time.

7. Describe class-action issues.

None known at this time.

8. State whether each party represents that it has made the initial disclosures required by Rule 26(a). If not, describe the arrangements that have been made to complete the disclosures.

Plaintiffs will file their initial disclosures within ten (10) days of the Rule 26(f) meeting of the parties as required by the Federal Rules of Civil Procedure.

Defendants P. A. Herrada, D. R. Barrera, L. E. Tillery, J. R. Willis, Darrell Strouse and David Perkins will file their initial disclosures within ten (10) days of the Rule 26(f) meeting, however, Defendants will withhold production of documents until such time the parties reach an agreement regarding a protective order. If no agreement can be reached, then the Defendants will withhold production of the documents until such time as the Court has ruled on an appropriate motion.

Defendant City of Houston will file their initial disclosures within ten (10) days of the Rule 26(f) meeting.

9. Describe the proposed agreed discovery plan, including:

A. Responses to all the matters raised in Rule 26(f).

None known at this time.

B. When and to whom the plaintiff anticipates it may send interrogatories.

Plaintiffs anticipate sending interrogatories to all Defendants within thirty (30) days of the initial pretrial conference.

C. When and to whom the defendant anticipates it may send interrogatories.

Defendants anticipate sending Interrogatories to each Plaintiff and to each Co-Defendant, sixty (60) days after initial discovery has been exchanged.

D. Of whom and by when the plaintiff anticipates taking oral depositions.

Plaintiffs anticipate taking the depositions of all individual Defendants as well as employees and representatives of the City of Houston and the Houston Police Department in the areas referenced in Plaintiffs' complaint after initial discovery has been exchanged.

E. Of whom and by when the defendant anticipates taking oral depositions.

Defendants anticipate taking the depositions of the Plaintiffs, Co-Defendants, and representatives of the City of Houston and the Houston Police Department within one-hundred and twenty days (120) after initial discovery has been exchanged.

Defendants David R. Barrera, Pete A. Herrada, Lamont E. Tillery and James R. Willis anticipate taking more than ten (10) depositions.

- F. When the plaintiff (or the party with the burden of proof on an issue) will be able to designate experts and provide the reports required by Rule 26(a)(2)(B), and when the opposing party will be able to designate responsive experts and provide their reports.

Plaintiffs anticipate designating experts and providing reports by September 31, 1999.

Defendants Darrell Strouse, David Perkins, David R. Barrera, Pete A. Herrada, Lamont E. Tillery and James R. Willis anticipate designating experts and providing reports by sixty (60) days after such time there is no longer a threat of federal/state criminal prosecution.

Defendant City of Houston anticipates designating experts and providing reports by February 29, 2000.

- G. List expert depositions the plaintiff (or the party with the burden of proof on an issue) anticipates taking and their anticipated completion date. See Rule 26(a)(2)(B) (expert report).

Plaintiffs anticipate taking the depositions of all of Defendants' designated testifying experts thirty (30) days after the date of designation.

- H. List expert depositions the opposing party anticipates taking and their anticipated completion date. See Rule 26(a)(2)(B) (expert report).

Defendants anticipate taking the depositions of all of Plaintiffs' designated testifying experts sixty (60) days after the date of designation.

10. If the parties are not agreed on a part of the discovery plan, describe the separate views and proposals of each party.

As evidenced by the responses given by the parties, there are several issues upon which the parties do not agree. The parties will continue to work together to try and resolve these issues prior to the scheduling conference on February 19, 1999.

Additionally, Defendants, P. A. Herrada, D. R. Barrera, L. E. Tillery, and J. R. Willis, do not agree on part of the discovery plan, as the Defendants have filed a motion for protective order against compelled self-incrimination and are seeking protection that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited in certain matters (F. R. C. P. 26(c)(4)).

Defendant Darrell Strouse will seek the Court's endorsement of his right against self-incrimination by filing a motion for a protective order on February 9, 1999.

11. Specify discovery beyond initial disclosures that has been undertaken to date.

Plaintiffs anticipates sending interrogatories and request for production to all Defendants within thirty (30) days of the initial pretrial conference. Plaintiffs' discovery beyond initial discovery to date has included a sworn statement of David Perkins, a copy which has been provided to all counsel.

Defendants P. A. Herrada, D. R. Barrera, L. E. Tillery, J. R. Willis, Darrell Strouse and David Perkins anticipate sending Interrogatories to each Plaintiff and to each Co-Defendant sixty (60) days after initial discovery has been exchanged.

Defendant City of Houston anticipates sending Interrogatories to each Plaintiff within sixty (60) days of the initial pretrial conference. Defendant City of Houston anticipates sending interrogatories to each Co-Defendant within sixty (60) days after such time as there is not longer a threat of federal or state criminal prosecution.

12. State the date the planned discovery can reasonably be completed.

Plaintiffs anticipate that planned discovery should be completed by December 31, 1999.

Defendants anticipate that planned discovery should be completed one hundred and eighty (180) days after such time there is no longer a threat of federal/state criminal prosecution.

13. Describe the possibilities for a prompt settlement or resolution of the case that were discussed in your Rule 26(f) meeting.

The parties will continue attempts for a prompt resolution of this case.

14. Describe what each party has done or agreed to do to bring about a prompt resolution.

The parties are working together for a prompt resolution of this case.

15. From the attorneys' discussion with the client, state the alternative dispute resolution techniques that are reasonably suited.

Plaintiffs and Defendants City of Houston and David Perkins will agree to discuss mediation at an appropriate time following initial discovery.

Defendants David R. Barrera, Pete A. Herrada, Lamont E. Tillery, James R. Willis and Darrell Strouse will agree to discuss mediation at an appropriate time following the completion of discovery after there is no longer a threat of federal/state criminal prosecution.

16. Magistrate judges may now hear jury and non-jury trials. Indicate the parties joint position on a trial before a magistrate judge.

The parties will not agree to trial before a Magistrate judge.

17. State whether a jury demand has been made and if it was made on time.

A jury demand has been timely filed.

18. Specify the number of hours it will take to present the evidence in this case.

At this time, the parties anticipate that it will take approximately eighty (80) to one hundred and sixty (160) hours (2-4 weeks) to try this case.

19. List pending motions that could be ruled on at the initial pretrial and scheduling conference.

The City of Houston's Motion to Dismiss and Motion for a More Definite Statement and Plaintiffs' Response.

The City of Houston's Motion for Protective Order regarding Documents Responsive to Rule 26 Disclosure and Plaintiffs' Response.

Defendants David R. Barrera, Pete A. Herrada, Lamont E. Tillery and James R. Willis' Motion for Order Restricting Extra-Judicial Statements ("Gag Order") and Plaintiffs' Response.

Defendants David R. Barrera, Pete A. Herrada, Lamont E. Tillery and James R. Willis' Motion for Protective Order Against Compelled Self-Incrimination and Plaintiffs' Response.

20. List any other pending motions.

None at this time.

21. Indicate other matters peculiar to this case, including discovery, that deserve the special attention of the court at the conference.

Defendants, P. A. Herrada, D. R. Barrera, L. E. Tillery, and J. R. Willis have filed a motion for a protective order pursuant to F. R. C. P. 26(c)(4), seeking protection against compelled self-incrimination. Such Defendants contend that although an extended abeyance of discovery in this lawsuit involving the investigation and/or shooting of Pedro Oregon on July 11-12, 1998, is undesirable from the standpoint of both the Court and the Plaintiffs, permitting such inconvenience seems preferable at this point rather than requiring such Defendants to choose between complying with the Plaintiffs' discovery requests and waiving their constitutional rights.

Defendant Darrell Strouse will also seek the Court's protection from self-incrimination by motion to be filed February 9, 1999.

The use of interpreters will be needed at the time of trial during the testimony of the Plaintiffs.

Although the parties do not know the exact number of depositions which will be taken in this case, the parties anticipate the number of depositions needed by each side will exceed ten (10) because of the number of parties and the complexity of this case.

22. List the names, bar numbers, addresses, and telephone numbers of *all* counsel.

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