

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

ELAINE BLANCHARD, et al.)	
)	
Plaintiffs,)	
)	
ACLU OF TENNESSEE, INC.,)	
)	
Intervening-Plaintiff,)	No. 2:17-cv-02120-JPM-dkv
)	
v.)	
)	
CITY OF MEMPHIS)	
)	
Defendant.)	

SCHEDULING ORDER

This is an action for enforcement of a 1978 Consent Order entered in the case of Kendrick, et al. v. Chandler, No.C76-449 (W.D. Tenn. 1978). Plaintiffs and Intervening-Plaintiff ACLU of Tennessee, Inc. allege that Defendant City of Memphis conducted video recording of protests in front of City Hall on February 21, 2017 and established a list of protesters, in violation of Plaintiffs’ First Amendment rights and the 1978 Consent Order. (ECF No. 1 at PageIDs 4-5.) Plaintiffs also allege that Defendant failed to publish the 1978 Consent Order on the City of Memphis and the Memphis Police Department websites, in violation of the Order. (Id. at PageID 5.) Plaintiffs additionally allege that the Memphis Police Department uses a program called Geofeedia to monitor social media postings in violation of the First Amendment and the 1978 Consent Order. (Id.; ECF No. 16 at PageID 227.) Lastly, Plaintiffs and Intervening-Plaintiff allege that the City of Memphis and the Memphis Police Department have created “black lists” of people who may not come into City Hall without police escort, which includes people who participated in protected First Amendment activities. (ECF No. 1 at PageID 6; ECF No. 16 at PageID 226.) Plaintiffs and Intervening-Plaintiff seek compensatory damages, injunctive relief, and a declaratory judgment. (ECF No. 1 at PageID 7; ECF No. 16 at PageID 228.)

Defendant argues that the 1978 Consent Order does not provide a jurisdictional basis for this suit and that Plaintiffs and Intervening-Plaintiff lack standing to pursue this action. (ECF No. 14 at PageID 205; ECF Nos. 8, 22.) Defendant asserts that the participants in the protest on February 21, 2017 were subject to a continuous video feed from a camera posted outside City Hall, and denies that the protest was lawful. (ECF No. 14 at PageID 208.) Defendant asserts that certain individuals are included in a “security book” for police escort in City Hall because they

have engaged in threatening and/or physically intimidating conduct. (Id. at PageID 210.) Defendant asserts that Plaintiffs are not included in the list of individuals to be monitored in City Hall, but were included in an “Authorization of Agency” document intended to authorize the police to remove individuals from the Mayor’s property following an illegal trespass and unlicensed protest at the Mayor’s private residence on December 19, 2016. (Id. at PageID 211.) Defendant asserts that the Authorization of Agency form was erroneously included with the security book at the City Hall, and has now since been removed. (Id. at PageID 211-12.) Defendant also states that the Consent Order is posted on the Memphis Police Department website. (Id. at PageIDs 208-09.)

Pursuant to Rule 16(b) a scheduling conference was held in this case on April 4, 2017 at 10:45 a.m. via telephone. Present for the conference were counsel for Plaintiffs Elaine Blanchard, Keedran Franklin, Paul Garner and Bradley Watkins, Counsel for Intervening Plaintiff ACLU of Tennessee, Inc. and Counsel for Defendant City of Memphis.

Pursuant to Rule 26(f), the parties reported that, due to the pending Motion to Bifurcate and Stay Discovery (ECF No. 19)¹ and Motions to Dismiss (ECF Nos. 8, 22), initial disclosures were not exchanged on or before **March 31, 2017**. The parties anticipate making initial disclosures, if necessary, within 14 days following the Court’s ruling on the pending² Motions to Dismiss (ECF Nos. 8, 22).

Pursuant to the scheduling conference, and in accordance with Rule 26(f) proposed discovery plan submitted by the parties, as amended, the following dates were established as the final dates for:

JOINING PARTIES: **June 5, 2017**

INITIAL MOTIONS TO DISMISS: **July 10, 2017**

AMENDING PLEADINGS: **June 19, 2017**

COMPLETING ALL DISCOVERY: **December 29, 2017**

(a) WRITTEN DISCOVERY **August 31, 2017**

(b) DEPOSITIONS: **December 29, 2017**

(c) EXPERT DISCLOSURE (Rule 26) (based on the statements of counsel, the Court does not anticipate any substantial expert testimony):

¹ The Motion to Bifurcate was denied on March 31, 2017. (ECF No. 27.)

² As discussed during the telephonic scheduling conference, this would not include any motions to dismiss filed after April 4, 2017.

(1) DISCLOSURE OF PLAINTIFF'S RULE 26 EXPERT INFORMATION:

September 15, 2017

(2) DISCLOSURE OF DEFENDANT'S RULE 26 EXPERT

INFORMATION: **October 30, 2017**

(3) EXPERT DEPOSITIONS: **December 29, 2017**

(d) RULE 26(e) SUPPLEMENTATION DUE: **December 29, 2017**

MOTIONS TO EXCLUDE EXPERTS UNDER F.R.E. 702/DAUBERT

MOTIONS (not likely): **January 31, 2018**

(e) WITNESSES AND EXHIBITS UNDER RULE 26(a)(3):

(1) PLAINTIFF'S FINAL LISTS OF WITNESSES AND EXHIBITS

UNDER RULE 26(a)(3) DUE: **April 7, 2018**

(2) DEFENDANT'S FINAL LISTS OF WITNESSES AND EXHIBITS

UNDER RULE 26(a)(3) DUE: **April 7, 2018**

(f) PARTIES HAVE 14 DAYS AFTER SERVICE OF FINAL LISTS OF WITNESSES AND EXHIBITS TO LIST OBJECTIONS UNDER RULE 26(a)(3).

FILING DISPOSITIVE MOTIONS: **February 28, 2018.**

Settlement cannot be evaluated prior to completion of written discovery and may be enhanced by use of the following alternative dispute resolution procedure: **mediation.**

IV. This **non-jury** trial is expected to last **4-5** days.

V. **TRIAL**

1. The **non-jury trial** in this matter, which is anticipated to last four (4) to five (5) days, is set to begin **Monday, May 7, 2018 at 9:30 a.m.** in Courtroom 1.
2. A pretrial conference is set for **Friday, April 27, 2018 at 9:30 AM.**
3. The joint pretrial order, trial briefs, and motions in limine are due by no later than **4:30 p.m. on Friday, April 20, 2018.**

VI. OTHER RELEVANT MATTERS:

As required by Local Rule 26.1(e), the parties have conferred as to whether they will seek discovery of electronically stored information (“e-discovery”) and have reached an agreement regarding an e-discovery protocol which has been submitted with the Rule 26(f) Planning Report for the Court’s consideration and approval.

Pursuant to agreement of the parties, if privileged or protected information is inadvertently produced, the producing party may, by timely notice, assert the privilege or protection and obtain the return of the materials without waiver.

No depositions may be scheduled to occur after the discovery deadline. All motions, discovery requests, or other filings that require a response must be filed sufficiently in advance of the discovery deadline to enable the opposing party to respond by the time permitted by the Rules prior to that date.

Motions to compel discovery are to be filed and served by the discovery deadline or within 30 days of the default or the service of the response, answer, or objection that is the subject of the motion, if the default or the service of the response, answer, or objection occurs within 30 days of the discovery deadline, unless the time for filing of such motion is extended for good cause shown, or the objection to the default, response, answer, or objection is waived.

This case is set for a non-jury trial. The pretrial order deadline, pretrial conference date, and trial date will be set by separate Order.

The parties may engage in ADR at their discretion by the ADR deadline. If any party determines that mediation is unlikely to be successful, would not be cost effective, or is a procedure in which they do not wish to engage, they may file a Notice of Intent not to engage in mediation. Upon such notice, the mediation shall be cancelled. Pursuant to Local Rule 16.2(d), if the parties chose to engage in mediation, within 7 days of completion of ADR, the parties shall file a notice confirming that the ADR was conducted and indicating whether it was successful or unsuccessful, without disclosing the parties’ respective positions at the ADR.

Pursuant to Local Rule 7.2(a)(1)(A), all motions, except motions pursuant to Fed. R. Civ. P. 12, 56, 59, and 60, shall be accompanied by a proposed order in a word processing format sent to the ECF mailbox of the presiding judge.

Pursuant to Local Rule 7.2(a)(1)(B), the parties are required to consult prior to filing any motion (except motions filed pursuant to Fed. R. Civ. P. 12, 56, 59, and 60). The opposing party must file a response to any opposed motion. Pursuant to Local Rule 7.2(a)(2), a party's failure to respond timely to any motion, other than one requesting dismissal of a claim or action, may be deemed good grounds for granting the motion. Neither party may file an additional reply to any motion, other than a motion filed pursuant to Fed. R. Civ. P. 12(b) or 56. As provided by Local Rule 7.2(c), if a party believes that a reply is necessary, it shall file a motion for leave to file a reply accompanied by a memorandum setting forth the reasons for which a reply is required within seven days of service of the response. Pursuant to Local Rules 12.1(c) and 56.1(c), a party moving for summary judgment or to dismiss may file a reply within 14 days after being served with the response in opposition to the motion.

Under Rule 30 and Rule 31 of the Federal Rules of Civil Procedure, no deposition shall exceed one (1) day of seven (7) hours in length, unless authorized by the Court. It is proposed that each side will be limited to fifteen (15) depositions unless additional depositions are authorized by the Court after a showing of good cause.

Under Rule 33 of the Federal Rules of Civil Procedure, no more than twenty-five (25) written interrogatories shall be served on a party unless authorized by the Court.

The parties **do not consent** to all matters being conducted by the Magistrate Judge including the conducting of discovery disputes, pretrial issues, and the trial, pursuant to 28 U.S.C. § 636(c).

Absent good cause shown, the scheduling dates set by this order will not be modified or extended.

It is so ordered, this 10th day of April, 2017.

/s/ Jon P. McCalla
JON P MCCALLA
UNITED STATES DISTRICT JUDGE