

Sixth Declaration of Clayton P. Kawski, Exhibit A

**Kawski, Clayton P.**

---

**From:** Kawski, Clayton P.  
**Sent:** Friday, September 20, 2013 4:14 PM  
**To:** 'Sean Young'  
**Cc:** Ulin, John C.; Curtis, Jr., Charles G.; Nadler, Carl S.; Idupuis@aclu-wi.org; krotker@aclu-wi.org; JRosen@nlchp.org; Steiner, Neil; Laughlin McDonald; Dale Ho; Gibson, Charlotte J.; Lazar, Maria S.; Lennington, Daniel P.; Princ, Diane; Kawski, Clayton P.  
**Subject:** RE: Frank Plaintiffs' Proposed Stipulation re Various Pretrial Matters

Hi Sean,

It was good to meet you on Monday, too. Thanks for sending these proposals, and I received the Track Changes version in your separate e-mail to me and shared it with my colleagues. We will confer and get back to you. When might work next week for a conference call?

One item that I am quite sure we won't need to confer on is deposing Ruthelle Frank. We would like to take her deposition in this case, and we believe that the issues in *NAACP v. Walker* are different enough than those here that we have a legitimate basis to do so. We believe that we have adequately met and conferred on this topic for purposes of Civil Local Rule 37.

Thank you,

Clay

**Clayton P. Kawski**  
Assistant Attorney General  
Wisconsin Department of Justice  
17 West Main Street  
P.O. Box 7857  
Madison, WI 53707-7857  
p. (608) 266-7477  
f. (608) 267-2223  
kawskicp@doj.state.wi.us

---

**From:** Sean Young [mailto:syoung@aclu.org]  
**Sent:** Thursday, September 19, 2013 9:17 PM  
**To:** Kawski, Clayton P.  
**Cc:** Ulin, John C.; Curtis, Jr., Charles G.; Nadler, Carl S.; Idupuis@aclu-wi.org; krotker@aclu-wi.org; JRosen@nlchp.org; Steiner, Neil; Laughlin McDonald; Dale Ho; Gibson, Charlotte J.; Lazar, Maria S.; Lennington, Daniel P.; Princ, Diane  
**Subject:** RE: Frank Plaintiffs' Proposed Stipulation re Various Pretrial Matters

Clay,

It was a pleasure to meet you on Monday. Attached please find a revised proposal, which reflects the many areas in which I believe we are in agreement. Some notes about the revised proposal:

- We have adjusted some of the proposed dates for additional expert discovery in accordance with a more realistic period for our expert to review and analyze the data you produce and, if appropriate, update his report. Mr. Barreto will be available to be deposed during the deposition period in Seattle or by video.

## Sixth Declaration of Clayton P. Kawski, Exhibit A

- We removed the reference to Ruthelle Frank. As we explained, we believe that she is likely to be unavailable for trial, and if so, we are entitled to rely on her state court deposition, in which Defendants had a full and fair opportunity to examine her on the same factual issues. A second deposition would be purely to harass her. Naturally, we agree that the parties reserve their respective rights with respect to use of her prior deposition and seeking an additional deposition in this case.
- As we represented to Judge Adelman on Monday, we will provide interrogatory responses for the plaintiffs we expect to testify at trial no later than September 30. Defendants are of course free to file a motion to compel with respect to their late service of interrogatories on other plaintiffs.
- With respect to deposition testimony, we only intend to introduce deposition testimony into evidence if the Rules allow it (e.g., if it is a statement of a party opponent or if the witness is "unavailable"). What we seek is to have the limitation on reading or playing more than 5 pages of a deposition transcript lifted because the purpose behind that rule does not seem to apply to a bench trial. (Moreover, we don't expect to read deposition testimony to Judge Adelman, but propose to submit designations for the Court to review at its convenience.)

We do not understand your refusal to stipulate to the facts set forth in the Declarations of Lucille Berrien, Arvina Martin, or David Canon. Their testimony consists entirely of authenticating documents – a military ID, a tribal ID, and testimony given to the legislature – and these facts are plainly undisputed. As explained in our e-mail from two weeks ago, we think that it is a tremendous waste of the Court's and those non-party witnesses' time to force them to give live or deposition testimony concerning such technical matters. If you will insist on having them make the trip (for some, the drive is significant) and on wasting the Court's time with their live testimony, please at least give an explanation so that we can raise this issue with the Court. We hope that you will reconsider stipulating to the undisputed facts set forth in their declaration, which should help streamline the trial.

In addition, as we mentioned during the Monday status conference, there may be additional fact witnesses that may testify at trial; attached please find Plaintiffs' Third Supplemental Disclosures. In addition, although we are not required to disclose rebuttal witnesses, in the event you call either or both of the clerks, we may call one or more different clerks in rebuttal.

Lastly, we would like to set up depositions for Sue Ertmer, Jeanette Merten, Bruce Landgraf, and Michael Sandvick. Please let us know what dates work for you, and we can coordinate with the *Jones* plaintiffs.

Sean

### **Sean Young**

Staff Attorney, Voting Rights Project

American Civil Liberties Union

125 Broad St.

New York, NY 10004

☎ 212.284.7359 ✉ [syoung@aclu.org](mailto:syoung@aclu.org)

[www.aclu.org](http://www.aclu.org)  

Sixth Declaration of Clayton P. Kawski, Exhibit A



BECAUSE FREEDOM CAN'T PROTECT ITSELF

*This message may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply email that this message has been inadvertently transmitted to you and delete this email from your system.*

---

**From:** Kawski, Clayton P. [<mailto:kawskicp@doj.state.wi.us>]  
**Sent:** Friday, September 13, 2013 3:31 PM  
**To:** Sean Young  
**Cc:** Ulin, John C.; Curtis, Jr., Charles G.; Nadler, Carl S.; [ldupuis@aclu-wi.org](mailto:ldupuis@aclu-wi.org); [krotker@aclu-wi.org](mailto:krotker@aclu-wi.org); [JRosen@nichp.org](mailto:JRosen@nichp.org); Steiner, Neil; Laughlin McDonald; Dale Ho; Gibson, Charlotte J.; Lazar, Maria S.; Lennington, Daniel P.; Princ, Diane; Kawski, Clayton P.  
**Subject:** RE: Frank Plaintiffs' Proposed Stipulation re Various Pretrial Matters

Hi Sean,

Defendants disagree regarding the un-redacted data for the reasons I have already stated at some length. Defendants continue to be prejudiced by Plaintiffs' refusal to produce this relevant information, which should have been produced last year. Will Plaintiffs enter a stipulated protective order as to this data?

Attached please find a revised proposed discovery stipulation. It seems that the parties are not far apart on many of the issues. (Rule 29(b) may require an order from the Court to re-open discovery.)

With regard to Audrey Anderson's deposition, are Plaintiffs asserting that she is unavailable to testify at trial?

With regard to reading or playing more than 5 pages per deposition, I am unclear on the issue. I do not understand if Plaintiffs are indicating that they prefer to have deposition transcripts entered into evidence at trial for witnesses that are available to testify (in other words, witnesses that are not "unavailable" under Rule 32(a)(4)).

I believe the revised stipulation addresses the remaining issues. If it does not, please let us know what is missing.

The proposed depositions of Plaintiffs/witnesses are mostly in north central Wisconsin, correct? The available dates for me are September 24 or 25 and October 1 or 2.

Thank you,

Clay

Clayton P. Kawski  
Assistant Attorney General  
Wisconsin Department of Justice  
17 West Main Street

## Sixth Declaration of Clayton P. Kawski, Exhibit A

P.O. Box 7857

Madison, WI 53707-7857

p. (608) 266-7477

f. (608) 267-2223

[kawskicp@doj.state.wi.us](mailto:kawskicp@doj.state.wi.us)