

Sean Young

From: Sean Young
Sent: Monday, September 23, 2013 7:27 PM
To: 'Kawski, Clay 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; Liu, Angela (Angela.Liu@dechert.com)
Subject: RE: Frank Plaintiffs' Proposed Stipulation re Various Pretrial Matters

Clay,

Responding to your points:

- We agree that it would be helpful to have a joint call with *Jones* and *Frank* Plaintiffs concerning the various issues. As stated on the phone, Wednesday morning and Thursday generally work for us.
- We maintain that the issues in the state NAACP case are sufficiently similar to those in this case that Ms. Frank's deposition in the state case suffices. Even if not, however, the Defendants in *Frank* had ample opportunity to depose Ms. Frank between the filing of this case in 2011 and the end of discovery last year. Ms. Frank is elderly and getting along in years, and your belated request for a deposition after you have already examined her on the same facts plainly has the effect, if not the intent, of harassing her.
- We seek the updated data so that Mr. Barreto can be prepared for any cross-examination you may seek to conduct based on that data. We believe you are obligated to produce that updated data pursuant to Rule 26(e) in response to Request No. 3 of our First Request for the Production of Documents. If you refuse to give us updated data, then we will move to preclude Defendants from relying on that updated data, or from arguing that Mr. Barreto's expert opinion is stale with respect to the estimated number of voters in Milwaukee County without ID. As for the duty to supplement, if Mr. Barreto forms new or materially different opinions upon which we intend to rely on direct examination, we will supplement his report pursuant to Rule 26(e) within three weeks of our receipt of all updated data.
- We are disappointed that Defendants will not stipulate to the basic facts set forth by Berrien, Martin, or Canon. At the appropriate time, we will inform Judge Adelman that because of Defendants' intransigence on such a minor logistical issue, he should expect to hear short, live testimony from these witnesses even though it would have been far more efficient to stipulate to their facts.
- We do not understand your opposition to the playing, reading or submitting of more than 5 pages of deposition testimony at trial. Please explain.
- As for the witnesses listed in Plaintiffs' Third Set of Supplemental Disclosures, we think that depositions would create an undue burden for these individuals. To the extent we intend to rely on their testimony at trial, we propose to obtain declarations from these witnesses which substantively respond to the questions in your interrogatories no later than October 14.
- Thank you for confirming that we may reach out to the four witnesses directly. We will get back to you on dates these witnesses are available.

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
www.aclu.org  



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From: Kawski, Clayton P. [mailto:kawskicp@doj.state.wi.us]
Sent: Monday, September 23, 2013 4:22 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
Subject: RE: Frank Plaintiffs' Proposed Stipulation re Various Pretrial Matters

Hi Sean,

Thanks for speaking with me on the phone this afternoon. To reiterate some main points and respond to a few items that you outlined below:

- It would be helpful to have the *Jones* and *Frank* Plaintiffs weigh in on discovery proposals together. A joint call would be helpful to make sure that all parties in both cases are in agreement regarding issues like the timing of depositions, exchange of expert reports, etc.
- We would like to depose Ruthelle Frank because she was not deposed in *Frank* and is the lead plaintiff, because the legal issues in *Frank* are different than those in *Milwaukee Branch of the NAACP v. Walker*, and because there are several additional defendants in *Frank* that were not parties to *Milwaukee Branch of the NAACP v. Walker*. In other words, not all Defendants in *Frank* have had an opportunity to examine Ms. Frank. I am willing to travel to Ms. Frank's house if that is the most convenient location.
- We believe that the parties should have no problem meeting an October 15 deadline to exchange supplemental expert reports. Defendants' view is that the parties should commit to filing supplemental expert reports on this date rather than leaving open the question whether such reports will be filed at all.
- Defendants are not willing to stipulate to the facts set forth in the Declarations of Lucille Berrien, Arvina Martin, or David Cannon. If these witnesses are available, they should testify at trial.
- Defendants do not agree to the new paragraph "6." in your proposed discovery stipulation of September 19 (*i.e.*, "To the extent . . .").

- Please let us know when the witnesses identified in Defendants' Third Set of Supplemental Disclosures are available to be deposed.
- You are welcome to contact Sue Ertmer, Jeannette Merten, Bruce Landgraf, and Michael Sandvick directly. Defendants' counsel does not represent these witnesses. Again, it would be good for counsel in *Frank* and *Jones* to work together to find dates for these depositions that are convenient.

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.; ldupuis@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.
- 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

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