

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SHELBY COUNTY, ALABAMA)

Plaintiff,)

v.)

ERIC H. HOLDER, JR., in his official capacity as)
ATTORNEY GENERAL OF THE UNITED)
STATES, *et al.*)

Civil Action No. 1:10-0651 (JDB)

Defendant, and)

EARL CUNNINGHAM, BOBBY PIERSON,)
BOBBY LEE HARRIS, *et al.*,)

Defendant-Intervenors.)

PARTIES’ JOINT RESPONSE TO THE COURT’S AUGUST 25, 2010 ORDER

Pursuant to this Court’s Order of August 25, 2010, Dkt. No. 29, the parties jointly submit this proposed briefing schedule. The Plaintiff, Defendant, and Defendant-Intervenors have conferred in good faith via teleconference regarding a proposed briefing schedule, including matters related to discovery. Except as otherwise specified, the parties continue to disagree about scheduling and the scope of this Court’s Order and thus were unable to reach consensus on most matters. Accordingly, this report includes a joint proposal for matters on which the parties did reach agreement, a scheduling section proposed by the Plaintiffs, and a scheduling section proposed by the Attorney General and the Defendant-Intervenors (“the Defendants”).

I. Joint Submission

The parties propose that on or before September 8, 2010, Defendant-Intervenors will submit an opposition to Plaintiff's Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56(f). The parties propose that Plaintiff submits a reply by September 15, 2010.

II. Plaintiff's Submission

Plaintiff does not herein include a proposed discovery plan. Plaintiff has not done so because it does not understand the Court's Order to require the submission of a discovery plan in addition to the "proposed briefing schedule to govern future proceedings in this case," Order at 2, and because such a plan is premature as the Court has not yet ruled on Defendant's Rule 56(f) discovery request or identified the issues on which discovery may be allowed if the request is granted. In the event the Court allows Rule 56(f) discovery, Plaintiff respectfully requests the opportunity to submit a proposed discovery plan at that juncture.

Plaintiff proposes the following briefing schedule that would be triggered by the denial of the Rule 56(f) request or the close of discovery if the request is granted:

- 30 days after the denial of the Rule 56(f) request or the close of discovery: Defendants' Cross-Motion for Summary Judgment/Opposition to Plaintiff's Motion for Summary Judgment is due. Amicus briefs in support of Defendants are due on the same date.
- 30 days after service of the Defendants' Cross-Motion for Summary Judgment/Opposition to Plaintiff's Motion for Summary Judgment: Plaintiff's Opposition to Defendants' Cross-Motion for Summary Judgment/Reply in Support of Plaintiff's Motion for Summary Judgment is due. Amicus briefs in support of Plaintiff are due on the same date.

- 15 days after service of Plaintiff's Opposition to Defendants' Cross-Motion for Summary Judgment/Reply in Support of Plaintiff's Motion for Summary Judgment: Defendants' Reply in Support of Cross-Motion for Summary Judgment is due.

III. Defendants' Submission

For reasons more fully set forth in the Attorney General's "Memorandum in Support of Attorney General's Opposition to Plaintiff's Motion for Summary Judgment," Dkt. No. 7, the Defendants believe discovery is appropriate in this case. The Defendants believe it is most efficient for the parties to engage in one period of discovery directed to all issues in this case, followed by one comprehensive round of briefing on dispositive motions, rather than any sequencing of the issues. This plan would permit the Court to consider and decide all issues at once. Defendants anticipate the case is likely to be resolved by cross-motions for summary judgment.

Because the parties dispute the need for discovery, the Defendants propose a schedule triggered by this Court's ruling on discovery. Accordingly, should the Court determine that discovery is appropriate, Defendants propose the following schedule:

- On the date on which this Court rules that discovery is appropriate: Fact discovery begins.
- 14 days after fact discovery begins: Fed. R. Civ. P. 26(a)(1) initial disclosures due.
- 120 days after fact discovery begins: Close of fact discovery.

- 30 days after fact discovery closes: Identification by all parties of retained experts, if any, and respective vitae and contractual agreements regarding the nature and scope of expert services.
- 45 days after the close of fact discovery: Experts' reports due from all parties.
- 30 days after experts' reports are due: Identification by all parties of retained rebuttal experts, if any, and respective vitae and contractual agreements regarding the nature and scope of expert services.
- 14 days after the identification of rebuttal experts: Rebuttal experts' reports due from all parties.
- 14 days after rebuttal experts' reports are due: Close of expert discovery.
- 30 days after close of expert discovery: Cross-motions for summary judgment due.
- 30 days after cross-motions for summary judgment are due: Responses/opposition to cross-motions due.
- 21 days after responses/opposition to responses to cross-motions are due: Replies due.

Alternatively, if the Court deems discovery inappropriate in this case, the Defendants propose the following briefing schedule:

- 90 days from the date on which this Court determines that discovery is inappropriate: Defendants' responses/cross motions due.
- 30 days after responses/cross motions are due: Plaintiff's response/reply due.
- 15 days after Plaintiff's response is due: Defendants' replies due.

Date: September 3, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2010, I served a true and correct copy of the foregoing via the Court's ECF system, to the following counsel of record:

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