

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

SUSAN CARNABY, INDIVIDUALLY AND AS	§	
REPRESENTATIVE OF THE ESTATE OF	§	CIVIL ACTION NO.: H-08-1366
ROLAND CARNABY, DECEASED;	§	
	§	
Plaintiff,	§	
	§	
V.	§	
	§	
CITY OF HOUSTON, CECIL FOSTER,	§	
AND ANDREW J. WASHINGTON;	§	JURY TRIAL DEMANDED

JOINT DISCOVERY/CASE MANAGEMENT PLAN  
UNDER RULE 26(f) FEDERAL RULES OF CIVIL PROCEDURE

**1. State when the parties conferred as required by Rule 26(f), and identify the counsel who conferred.**

The conference occurred by telephone, July 1, 2008, at 2:30 pm between Randall L. Kallinen, Counsel for Plaintiff and L.A. Teehan, Counsel for Defendants.

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

Cause No. PR030380; *In the Estate of Roland Carnaby, Deceased*; County Court at Law #3, Brazoria County, Texas.

**3. Briefly describe what this case is about.**

Plaintiff asserts that Susan Carnaby (Susan) is an eighth grade teacher who brings a 42 USC Section 1983 case because the Houston police shot her unarmed husband in the back and then failed to provide medical care. Her husband Roland, 52, frequently worked as a contractor for various federal agencies. Roland was president of the Houston Office of Association For Intelligence (AFIO) Officers. During daylight hours on April 29, 2008, the Houston Police Department stopped Roland Carnaby, 52, for speeding in the south of Houston, Texas. In his vehicle Roland had sensitive information in his laptop computer and elsewhere regarding his national security interest investigations. Roland showed the officer his identification and the officer checked Roland's background via the HPD squad car computers. Roland had never been convicted or even arrested for a crime and had no warrants for his arrest. The officers at the scene were told by an HPD superior to arrest Roland "for something" which would entail impounding the vehicle and its contents including the laptop computer with the sensitive security

data entrusted to Roland. The police attacked the vehicle with nightsticks and weapons drawn shouting for Roland to get out smashing in the passenger window. When Roland complied by getting out of the SUV an officer slammed Roland with the SUV door. Two Houston Police officers, Cecil Foster and Andrew J. Washington, shot at Roland Carnaby striking him in the lower back when they were not in objectively reasonable fear of their lives or the lives of another. Instead of administering any aid to the gunshot wound(s) the HPD officers handcuffed Roland and left him lying facedown on the street. When Houston paramedics arrived at least twelve minutes later they did not take Roland to the nearest emergency room--Roland was fully covered by medical insurance--but to Ben Taub Hospital ten miles away through busy Houston streets.

Defendants assert that on April 29, 2008, Decedent, Roland Carnaby was stopped for speeding by Officer Starks with HPD. Mr. Carnaby's actions peaked the officer's suspicions. As the officer was deliberating on the best course of action to take with Mr. Carnaby, Mr. Carnaby fled from the location of the traffic stop. Because Officer Starks was concerned that perhaps Mr. Carnaby (now, *the suspect*), was guilty of other crimes in addition to evading a police officer, he pursued. Other officers became involved in the pursuit. Eventually, Mr. Carnaby stopped his vehicle at the Woodway exit of the West Loop South. He was ordered by Officer Foster and Sergeant Washington to exit his vehicle. He refused to comply with the officers' orders. Eventually, Mr. Carnaby exited his vehicle and, as he did so, he turned and reached under the driver's seat, coming up with a shiny object in his hand. The officers were aware that Mr. Carnaby had a permit to carry a concealed hand gun. When they saw the shiny object in Mr. Carnaby's hand they immediately felt in danger of their lives, and each officer fired one shot at the suspect. Mr. Carnaby was struck by Officer Foster's bullet and later died.

**4. Specify the allegation of federal jurisdiction.**

This case was brought by Plaintiff pursuant to 42 U.S.C. Section 1983 for violations of civil rights,(as well as Article 101.001, *et seq.*, of the Texas Civil Practice and Remedies Code). This Court has pendent jurisdiction over any state claims.

**5. Name the parties who disagree and the reasons.**

No disagreement as to federal jurisdiction.

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

Plaintiff anticipates adding parties by October 1, 2008.

**7. List anticipated interventions.**

Defendant anticipates an intervention might possibly be filed by Ms. Donna Baker, who appears as an applicant in the probate matter.

**8. Describe class-action issues.**

None.

**9. 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.**

Defendants and plaintiff will make their initial disclosures by July 15, 2008.

**10. Describe the proposed agreed discovery plan, including:**

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

The parties' responses to the matters contained in FED.R.CIV.P. 26(f) are addressed herein.

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

To all defendants by 30 days prior to the end of the discovery period.

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

Defendants anticipate propounding written interrogatories to Plaintiff within the next 45 days.

**D. Of whom and by what date the plaintiff anticipates taking oral depositions.**

To all defendants and some witnesses by 30 days prior to the end of the discovery period.

**E. Of whom and by what date the defendants anticipate taking oral depositions.**

Defendants anticipate deposing Plaintiff within the next three (3) months. Should it become apparent through discovery that other depositions are necessary, Defendant will notice and complete them in a timely manner.

**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.**

Plaintiff anticipates designating experts and providing reports by February 2, 2009.

**G. Expert depositions that 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).**

45 days after defendants designate experts and provide reports.

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

Defendants anticipate deposing any experts designated by Plaintiff by 45 days after such designations and reports provided.

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

None at this time.

**12. Specify the discovery beyond initial disclosures that has been undertaken to date.**

No discovery has been undertaken at this stage.

**13. State the date by which the planned discovery can reasonably be completed.**

June 1, 2009.

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

The parties agree that settlement is not possible at this time.

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

The parties discussed resolution but agreed its too early.

**16. From the attorneys' discussion with their clients, state the alternative dispute resolution techniques that are reasonably suitable, and state when such techniques may be effectively used in the case.**

Plaintiff is willing to use any ADR at any time.

At this time Defendants do not believe alternative dispute resolution is suited for this matter, however, should it become apparent that ADR is suitable at some future time defendants will be amenable.

**17. Magistrate judges may now hear jury and non-jury trials. Indicate the Parties' joint position on a trial before a magistrate judge.**

Defendants are opposed to a magistrate trial.

**18. State whether a jury demand has been made and whether it was made on time.**

Jury demand was timely made.

**19. Specify the number of hours that it will take to present the evidence in this case.**

Defendants anticipate it will take 30 hours to present evidence in this case.  
Plaintiff anticipates it will take 60 hours to present evidence in this case.

**20. List pending motions that can be resolved at the initial pretrial and scheduling conference.**

None at this time.

**21. List other pending motions.**

None at this time.

**22. Indicate other matters peculiar to the case, including discovery issues, that deserve the special attention of the Court at the conference.**

None other than those already discussed with the Court.

**23. Certify that all parties have filed Disclosure of Interested Parties, as directed in the Order for Conference and Disclosure of Interested Parties, listing the date of filing for original disclosures and any amendments.**

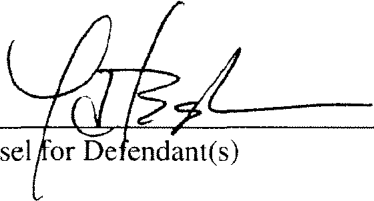
Defendants' Disclosure of Interested Parties was filed on June 27, 2008.  
Plaintiff's Certificate of Interested Parties was filed on July 1, 2008.

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

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*Attorney for Plaintiff*

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*Attorney for Defendants*

*Randall L. Kallinen*                      July 1, 2008

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Counsel for Plaintiff(s)	Date
	 
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Counsel for Defendant(s)	Date
	7/1/08

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

vs.

§  
§  
§  
§

C. A. No. H-08-1366

SCHEDULING/DOCKET CONTROL ORDER

Anticipated Length of Trial: \_\_\_ Days

Jury: X Non-Jury: \_\_\_

1. NEW PARTIES shall be joined by:  
The Attorney causing the addition of new parties will provide copies of this Order to new parties.
2. EXPERT WITNESSES for the PLAINTIFF will be identified by a report listing the qualifications of each expert, each opinion that the expert will present, and the basis for it. DUE DATE:
3. EXPERT WITNESSES for the DEFENDANT will be identified by a report listing the qualifications of each expert, each opinion that the expert will present, and the basis for it. DUE DATE:
4. DISCOVERY must be completed by:  
Written discovery requests are not timely if they are filed so close to this deadline that the recipient would not be required under the Federal Rules of Civil Procedure to respond until after the deadline.
5. DISPOSITIVE AND NON-DISPOSITIVE MOTIONS (except motions *in limine*) will be filed by:
6. JOINT PRETRIAL ORDER and MOTIONS *IN LIMINE* (The Court will fill in this date)
7. TRIAL will begin at 8:30 a.m.

October 1, 2008

February 2, 2009

March 17, 2009

June 1, 2009

May 4, 2009

July 27, 2009

Aug 3, 2009

Date

July 1, 2008

Date

7/1/08

Date

Keith P. Ellison

United States District Judge

Randell J. Kallinen  
Counsel for Plaintiff(s)

Counsel for Plaintiff(s)

[Signature]  
Counsel for Defendant(s)

Counsel for Defendant(s)