

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

GERALD LYNN BOSTOCK,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION
)	NO: 1:16-cv-01460-ELR-WEJ
CLAYTON COUNTY,)	
)	
Defendant.)	

JOINT PRELIMINARY REPORT AND DISCOVERY PLAN

1. Description of Case:

(a) Describe briefly the nature of this action.

This civil action is pled in one count and alleges discrimination on the basis of his sexual orientation in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 2000e *et seq.*, as amended.

(b) Summarize, in the space provided below, the facts of this case. The summary should not be argumentative nor recite evidence.

This civil action is brought by Plaintiff Gerald Lynn Bostock (“Plaintiff”), a former employee of Defendant Clayton County (“Defendant”). Plaintiff worked for Defendant from 2003 to 2013. Plaintiff was charged with the primary responsibility of Clayton County CASA (Court Appointed Special Advocate). Plaintiff alleges Defendant terminated his employment on the basis of his sexual orientation after

Plaintiff joined a gay recreational softball league and began to promote the CASA program to the softball league members as a volunteer opportunity.

Defendant denies Plaintiff's claim and contends it terminated Plaintiff's employment for legitimate and nondiscriminatory reasons. Defendant further contends that the fact Plaintiff presented himself as being gay was widely known to employees who worked in the Clayton County Juvenile Court during most of Plaintiff's employment with Defendant.

(c) The legal issues to be tried are as follows:

Plaintiff's Issues to Be Tried:

1. Whether Defendant discriminated against Plaintiff on the basis of Plaintiff's sexual orientation in violation of Title VII.
2. Whether Plaintiff can establish a prima facie case of sexual orientation discrimination under Title VII .
3. Whether Defendant can articulate a legitimate, non-discriminatory reason for the challenged actions.
4. Whether Defendant's articulated reasons for the challenged actions were a pretext for intentional discrimination in violation of Title VII.
5. What, if any, back pay and lost benefits Plaintiff is entitled to recover.
6. What, if any, front pay and lost benefits Plaintiff is entitled to recover.

7. What, if any, compensatory damages and/or punitive damages Plaintiff is entitled to recover.
8. What, if any, injunctive or other equitable relief Plaintiff is entitled to be awarded.
9. Whether Plaintiff is entitled to recover his reasonable attorney's fees and costs, and if so, in what amount(s).

Defendant's Issues to Be Tried:

1. Whether Plaintiff's Second Amended Complaint and each of its causes of action fail to state a claim upon which relief can be granted.
2. Whether some or all of Plaintiff's claims are barred by the applicable statutes of limitations, including the failure to file the instant lawsuit within the time period required by the applicable statutes.
3. Whether Plaintiff's damages are limited to those remedies and those amounts provided for by statute.
4. Whether, even if any adverse actions were taken against the Plaintiff for reasons related to Plaintiff's protected class status or any exercise by Plaintiff of protected rights, Plaintiff would have been subject to adverse employment actions or otherwise for reasons unrelated to any protected class status or activities, including after-acquired evidence.

5. Whether any adverse action taken against Plaintiff was done so in good faith without malice or reckless indifference to Plaintiff's protected rights.

6. Whether all claims of the Plaintiff brought pursuant to Title VII are barred to the extent that they were never made the subject of a charge of discrimination with the Equal Employment Opportunity Commission within the time required by law or because the claims are not within the scope of any charge of discrimination filed by Plaintiff.

7. Whether some or all of Plaintiff's claims are barred by Plaintiff's failure to exhaust administrative remedies.

8. Whether Plaintiff has failed to mitigate damages as required by law.

9. Whether some or all of Plaintiff's claims are barred by the doctrines of waiver, estoppel, fraud and/or illegality.

10. Whether Plaintiff's Second Amended Complaint fails to state a claim for punitive, actual, special, exemplary, liquidated, and/or compensatory damages.

11. Whether Plaintiff has unclean hands.

(d) The cases listed below (include both style and action number) are:

(1) Pending Related Cases: None.

(2) Previously Adjudicated Related Cases: None.

2. This case is complex because it possesses one (1) or more of the

features listed below (please check): None known at this time.

- _____ (1) Unusually large number of parties.
- _____ (2) Unusually large number of claims or defenses.
- _____ (3) Factual issues are exceptionally complex.
- _____ (4) Greater than normal volume of evidence.
- _____ (5) Extended discovery period is needed.
- _____ (6) Problems locating or preserving evidence.
- _____ (7) Pending parallel investigations or action by government.
- _____ (8) Multiple use of experts.
- _____ (9) Need for discovery outside United States boundaries.
- _____ (10) Existence of highly technical issues and proof.
- _____ (11) Unusually complex discovery of electronically stored information.

3. Counsel:

The following individually-named attorneys are hereby designated as lead counsel for the parties:

Plaintiff: Thomas J. Mew, IV, Esq. and Edward D. Buckley,
Esq.

Defendant: Jack R. Hancock, Esq.

4. Jurisdiction:

Is there any question regarding this Court's jurisdiction?

Yes No

If "yes," please attach a statement, not to exceed one (1) page, explaining the jurisdictional objection. When there are multiple claims, identify and discuss separately the claim(s) on which the objection is based. Each objection should be supported by authority.

5. Parties to this Action:

(a) The following persons are necessary parties who have not been joined:

None known at this time.

(b) The following persons are improperly joined as parties:

None known at this time.

(c) The names of the following parties are either inaccurately stated or necessary portions of their names are omitted:

None known at this time.

(d) The parties shall have a continuing duty to inform the Court of any contentions regarding unnamed parties necessary to this action or any contentions regarding misjoinder of parties or errors in the statement of a party's name.

6. Amendments To The Pleadings:

Amended and supplemental pleadings must be filed in accordance with

the time limitations and other provisions of Fed.R.Civ.P. 15. Further instructions regarding amendments are contained in LR 15.

(a) List separately any amendments to the pleadings which the parties anticipate will be necessary:

Plaintiff anticipates amending his complaint pursuant to Fed. R. Civ. P. 15(a). If Plaintiff seeks to amend, Defendant will review Plaintiff's proposed amendment and advise the Court as to whether it consents, in accordance with Rule 15(a)(2).

(b) Amendments to the pleadings submitted **LATER THAN THIRTY (30) DAYS** after the Joint Preliminary Report and Discovery Plan is filed, or should have been filed, will not be accepted for filing, unless otherwise permitted by law.

7. **Filing Times For Motions:**

All motions should be filed as soon as possible. The Local Rules set specific filing limits for some motions. These times are restated below.

All other motions must be filed **WITHIN THIRTY (30) DAYS** after the beginning of discovery, unless the filing party has obtained prior permission of the Court to file later. Local Rule 7.1A(2).

(a) **Motions to Compel:** before the close of discovery or within the extension period allowed in some instances. Local Rule 37.1.

(b) **Summary Judgment Motions:** within thirty (30) days after the close of discovery, unless otherwise permitted by Court order. Local Rule 56.1.

(c) **Other Limited Motions:** refer to Local Rules 7.2A, 7.2B, and 7.2E, respectively, regarding filing limitations for motions pending on removal, emergency motions, and motions for reconsideration.

(d) **Motions Objecting to Expert Testimony:** **Daubert** motions

with regard to expert testimony no later than date that the proposed pretrial order is submitted. Local Rule 7.2F.

8. Initial Disclosures:

The parties are required to serve initial disclosures in accordance with Fed. R. Civ. P. 26. If any party objects that initial disclosures are not appropriate, state the party and the basis for the party's objection. NOTE: your initial disclosures should include electronically stored information. Refer to Fed.R.Civ.P. 26(a)(1)(B).

The parties do not object to serving initial disclosures.

9. Request for Scheduling Conference:

Does any party request a scheduling conference with the Court? If so, please state the issues which could be addressed and the position of each party.

The parties do not request a scheduling conference at this time.

10. Discovery Period:

The discovery period commences thirty (30) days after the appearance of the first Defendant by answer to the complaint. As stated in LR 26.2A, responses to initiated discovery must be completed before expiration of the assigned discovery period.

Cases in this Court are assigned to one of the following three (3) discovery tracks: (a) zero month discovery period; (b) four months discovery period; and (c) eight months discovery period. A chart showing the assignment of cases to a discovery track by filing category is contained in Appendix F. The track to which a particular case is assigned is also stamped on the complaint and service copies of the complaint at the time of filing.

Please state below the subjects on which discovery may be needed:

Plaintiff's subjects:

1. Plaintiff's claims.
2. Plaintiff's employment with Defendant and Defendant's termination of same.
3. Defendant's articulated reasons for terminating Plaintiff.
4. Defendant's audit of Plaintiff's department including, but not limited to, the parties responsible for the audit and the basis therefore.
5. Defendant's affirmative defenses and the basis for same.
6. Statements made by Defendant or its employees concerning Plaintiff and Plaintiff's termination.
7. Other complaints and lawsuits against Defendant concerning discrimination.
8. Plaintiff's damages.

Defendant's subjects:

1. Plaintiff's employment with Defendant.
2. The facts and circumstances surrounding the termination of Plaintiff's employment with Defendant.
3. Plaintiff's employment history prior to his employment with Defendant.

4. Plaintiff's efforts to obtain subsequent employment following his termination from Defendant.
5. Plaintiff's employment subsequent to his employment with Defendant.
6. Plaintiff's medical, emotional, and financial condition before, during, and after his employment with Defendant.
7. The factual basis of the claims pled in the Second Amended Complaint.
8. The extent to which Plaintiff suffered damages as alleged in his Second Amended Complaint.
9. The factual basis of Plaintiff's alleged damages.
10. Plaintiff's efforts to mitigate damages.

The parties have articulated separate lists of topics and do not concede that topics specified by the other party are necessarily appropriate topics for discovery in this case.

If the parties anticipate that additional time beyond that allowed by the assigned discovery track will be needed to complete discovery or that discovery should be conducted in phases or be limited to or focused upon particular issues, please state those reasons in detail below:

The parties initially do not anticipate that additional time will be needed to complete discovery; however, the parties reserve the right to move the Court for a discovery extension if necessary, in accordance with the Federal Rules of Civil Procedure and the Local Rules of this Court. They will confer and attempt to agree

upon any necessary extension before moving the Court for the same.

11. Discovery Limitation:

(a) What changes should be made in the limitations on discovery imposed under the Federal Rules of Civil Procedure or Local Rules of this Court, and what other limitations should be imposed?

Pursuant to Fed. R. Civ. P. 5(b)(2)(e), the parties consent to service by electronic means with respect to discovery requests and responses, in which event such service is complete upon transmission. The parties suggest no additional limitations.

(b) Is any party seeking discovery of electronically stored information?

 X Yes No

If “yes,”

(1) The parties have discussed the sources and scope of the production of electronically stored information and have agreed to limit the scope of production (e.g., accessibility, search terms, date limitations, or key witnesses) as follows:

The parties have had preliminary discussions regarding the scope of electronic discovery in this case. At this time, however the parties have not yet served any discovery requests. Accordingly, the parties anticipate that they will likely need to have further and more specific meet-and-confer discussions about electronic discovery issues. Nevertheless, the parties anticipate that as to sources of electronically stored information (ESI), Plaintiff will ask Defendant to identify

(a) the custodians most likely to have discoverable ESI in their possession, custody, or control; and (b) the non-custodial data sources (e.g., shared drives, servers, etc.) likely to contain discoverable ESI. The parties agree that once Defendant has identified the potential sources of ESI, the parties will confer and attempt to reach agreement on the scope of search criteria, including custodians, dates ranges, keyword search terms, and costs, in order to ensure that the discovery sought does not impose an undue burden and is proportional to the needs of this case.

(2) The parties have discussed the format for the production of electronically stored information (e.g., Tagged Image File Format (TIFF or .TIF files), Portable Document Format (PDF), or native), method of production (e.g., paper or disk), and the inclusion or exclusion and use of metadata, and have agreed as follows:

The parties agree that discovery should be produced with Optical Character Recognition (“OCR”) searchable text when it is reasonable to do so. The parties’ preferred formats include: searchable Portable Document Format (“PDF”) files, multi-page Tagged Image File Format (“TIFF” or “TIF”) with a companion OCR. The parties request that files that cannot be easily converted to an image format (e.g., Excel spreadsheets) should be produced in native format. The parties will endeavor to comply with all reasonable requests regarding the

format for the production of ESI discovery. The parties will confer as to whether metadata must be produced in response to any particular discovery request.

In the absence of agreement on issues regarding the discovery of electronically stored information and other information, the parties shall request a conference with the Court if good faith efforts to resolve any disputes fail.

12. Other Orders:

What other orders do the parties think that the Court should enter under Rule 26(c) or under Rule 16(b) and (c)?

The parties anticipate that they may submit a mutually agreed upon protective order for the Court's approval to govern the use and disclosure of confidential information and documents produced during this action.

13. Settlement Potential:

(a) Lead Counsel for the parties certify by their signatures below that they conducted a Rule 26(f) conference that was held on October 22, 2020 and that they participated in settlement discussions. Other persons who participated in the settlement discussions are listed according to party.

For Plaintiff: Lead Counsel (signature): /s/ Thomas J. Mew, IV

For Defendant: Lead Counsel (signature): /s/ Jack R. Hancock

**Other Participants: William H. Buechner, Jr.
Michael M. Hill**

(b) All parties were promptly informed of all offers of settlement and following discussion by all counsel, it appears that there is now:

A possibility of settlement before discovery;

A possibility of settlement after discovery;

A possibility of settlement, but a conference with the Judge is needed.

No possibility of settlement.

(c) Counsel () do or () do not intend to hold additional settlement conferences among themselves prior to the close of discovery. The proposed date of the next settlement conference is _____.

(d) The following specific problems have created a hindrance to settlement of this case:

None at this time.

14. Trial By Magistrate Judge:

Note: Trial before a Magistrate Judge will be by jury trial if a party is otherwise entitled to a jury trial.

(a) The parties () do consent to having this case tried before a magistrate judge of this Court. A completed Consent to Jurisdiction by a United States Magistrate Judge form has been submitted to the Clerk of Court this _____ day of _____, 20____.

(b) The parties () do not consent to having this case tried before a magistrate judge of this Court.

Completed form submitted this 23rd day of October, 2020.

/s/ Thomas J. Mew, IV

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Georgia Bar No. 092750
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GERALD LYNN BOSTOCK,)	
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SCHEDULING ORDER

Upon review of the information contained in the Joint Preliminary Report and Discovery Plan form completed and filed by the parties, the Court orders that the time limits for adding parties, amending the pleadings, filing motions, completing discovery and discussing settlement are as set out in the Federal Rules of Civil Procedure and the Local Rules of this Court, except as herein modified:

IT IS SO ORDERED, this ____ day of _____, 2020.

The Honorable Walter E. Johnson
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing **JOINT PRELIMINARY REPORT AND DISCOVERY PLAN** with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following attorneys of record:

Thomas J. Mew, IV
Edward D. Buckley
Andrew M. Beal
Rachel Berlin Benjamin
Buckley Beal LLP
600 Peachtree Street, NE, Suite 3900
Atlanta, GA 30308

Dated this 23rd day of October, 2020.

s/ Jack R. Hancock _____

Jack R. Hancock
Georgia Bar No. 322450

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