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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

David William Flahive,)	
)	
Plaintiff,)	CV 07-741-PHX-NVW (JM)
)	
v.)	SCHEDULING ORDER
)	
Dora B. Schriro, et al.,)	
)	
Defendants.)	

This order requires the parties to file a joint report on or before September 28, 2007. Willful failure to comply may result in imposition of sanctions.

Application of Disclosure and Pretrial Management Rules - Rule 26 of the Federal Rules of Civil Procedure exempts prisoner’s civil rights cases, such as this one, from the requirements of discovery plans, disclosures, etc. However, as noted in the Advisory Committee Note to the 2000 Amendments to Rule 26, “[e]ven in a case excluded by subdivision (a)(1)(E) . . . the court can order exchange of similar information in managing the action under Rule 16.” The Advisory Committee Note also relates that the exemptions were created because “there is likely to be little or no discovery in most such cases.”

The Court finds that there is a substantial likelihood that, in light of the nature of Plaintiff’s claims, there will be discovery between the parties. The Court also finds that continuing to require the parties to comply with the provisions of Rule 26(a) and 26(f) will benefit the parties to this action by allowing the early identification of factual, legal, and evidentiary issues, and providing a forum and impetus for frank discussion between the parties as to the relative strengths and weaknesses of their cases.

1 **IT IS THEREFORE ORDERED** that, notwithstanding the exemptions otherwise
2 applicable, the parties will provide initial and continuing disclosure as required by Rule
3 26(a) and (e), Federal Rules of Civil Procedure.

4 **IT IS FURTHER ORDERED** the following schedule shall apply in this case:

5 1. **Initial Disclosures:** The parties shall submit initial disclosures pursuant to Rule
6 26(a), Federal Rules of Civil Procedure by **September 28, 2007**.

7 2. **Supplemental Disclosures:**

8 2.1 The parties shall disclose all lay and expert witnesses and their Rule
9 26(a)(2)(B) Reports by **January 28, 2008**.

10 2.2 The parties shall disclose all rebuttal expert witnesses and their Rule
11 26(a)(2)(B) Reports by **February 28, 2008**.

12 3. **Plaintiff's Deposition:** Defendants may take Plaintiff's deposition, if they choose,
13 no later than **March 28, 2008**.

14 3.1 Leave of Court for the taking of such deposition is granted pursuant to Rule
15 30(a)(2), Federal Rules of Civil Procedure. The deposition may be taken by
16 telephone at the option of defendants.

17 4. **Discovery Requests:** All discovery shall be completed by **May 28, 2008**.

18 4.1 No discovery requests may be submitted after this date except by stipulation
19 of the parties or by Court order for good cause shown.

20 4.2 Responses to discovery must be served within the time provided by the rules
21 unless the parties stipulate otherwise.

22 4.3 **Limits on Discovery:** Discovery requests shall be limited to the following:

23 (a) Interrogatories: No more than 25 (including subparts) by each party to
24 any other party. Fed.R.Civ.P. 33(a).

25 (b) Requests for Production of Documents: No more than 15 from each
26 party to any other party.

1 (c) Requests for Admission: No more than 10 from each party to any other
2 party.

3 (d) Depositions: Because of the logistical problems involved, self-
4 represented incarcerated persons may not take depositions without prior
5 Court permission. Such permission will not be granted except upon a
6 showing of exceptional circumstances. Requests for such depositions
7 shall reflect an ability to pay the costs of taking such deposition.

8 This enumeration is not intended to relieve the parties from complying with
9 other limits on discovery applicable under the Federal Rules of Civil
10 Procedure.

11 **5. Discovery Motions:**

12 5.1 The court will not entertain motions to compel discovery, motions for
13 sanctions, motions for protective orders, or the like unless and until there has
14 been compliance with the following procedure. In the event of a dispute over
15 discovery, prior to bringing any discovery motions, **the parties must:**

16 (a) Confer in good faith, in person, or by telephone, and attempt to
17 resolve the dispute. Rule 37(a), Federal Rules of Civil
18 Procedure; Rules 1.10(j), Rules of Practice of the U.S. District
19 Court for the district of Arizona.

20 (b) If the dispute remains unresolved, the parties must arrange and
21 participate in a telephonic conference with the undersigned
22 judge. To do so, either party may submit a request specifying
23 the results of the conference between the parties and the matters
24 remaining in dispute.

25 Failure to comply with this procedure prior to filing a discovery motion will
26 generally result in the motion being stricken.

1 6. **Motions to Join or Amend:** All motions to join parties or to amend pleadings shall
2 be filed by May 28, 2008.

3 7. **Dispositive Motions:** All dispositive motions shall be filed by June 27, 2008.

4 8. **Proposed Order:** The parties shall lodge a joint pretrial statement and proposed
5 order, on or before July 28, 2008.

6 8.1 In the event one or more dispositive motions is filed, the proposed
7 pretrial order shall be lodged within 30 days of the filing of the court's
8 ruling on the last dispositive motion that does not dispose of the case.

9
10 8.2 Defendants are responsible for initiating the drafting and submission of
11 the proposed pretrial order in the form prescribed by the assigned trial
12 judge.

13 9. **Motions to Enlarge Time** - Rule 6(b)(1), Federal Rules of Civil Procedure, provides
14 that the court may enlarge a time limit upon request made prior to expiration "with or
15 without motion or notice." Any party seeking from this Magistrate Judge an
16 enlargement of a time limitation prior to its expiration pursuant to Rule 6(b)(1) shall
17 submit a motion explaining the necessity for the enlargement and a proposed order.

18 The parties are put on notice that the foregoing schedule shall not be modified except
19 upon a showing of good cause and by leave of court. Rule 16(b), Federal Rules of Civil
20 Procedure.

21 **IT IS FURTHER ORDERED** that the parties comply with the Rule 26(f), Federal
22 Rules of Civil Procedure, by meeting or conducting a telephone conference, and shall submit
23 to the Court their Joint Discovery Plan on or before September 28, 2007.

24 **IT IS FURTHER ORDERED** that the Joint Discovery Plan shall reflect the results
25 of their conference and shall outline their discovery plan. The report shall include
26 individually numbered brief statements indicating:

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- A. The nature of the case: the factual and legal basis of Plaintiffs' claims and Defendants' defenses.
- B. The factual and legal issues genuinely in dispute and whether they can be narrowed by stipulation or motions.
- C. The jurisdictional basis of the case citing specific statutes.
- D. The parties, if any, that have not been served, or have been served and have not yet appeared and answered.
- E. Whether there are dispositive or partially dispositive issues to be decided by pretrial motions.
- F. The status of related cases pending before other judges of this court or before other courts.
- G. A statement of when initial disclosures were made or will be made, or any proposed changes in the requirements for initial disclosures set forth in Rule 26(a), Federal Rules of Civil Procedure.
- H. A statement of all outstanding discovery requests, and the estimated time when response will be made.
- I. A statement of all expected discovery requests, and a schedule for when they are expected to be made and when responses are expected to be made.
- J. Proposed revised limits on discovery. Any such proposed revisions will explain why the presumptive limits are not appropriate.
- K. Proposed revised deadlines for:
 - (1) filing motions to amend pleadings and motions to join additional parties;
 - (2) disclosure of expert testimony under Rule 26(a)(2)(C), Federal Rules of Civil Procedure;
 - (3) completing discovery;
 - (4) filing dispositive motions; and

1 (5) filing a proposed joint pretrial order.

2 Any such proposed revisions will explain why the deadlines outlined above are
3 not appropriate.

4 L. Estimated length of trial.

5 M. Whether a jury trial has been requested.

6 N. The prospects for settlement.

7 O. Any unusual, difficult, or complex problems affecting the conduct of the case.

8 P. Any other matters which the parties believe will aid in expediting the
9 disposition of this matter efficiently.

10 After the filing of the Joint Discovery Plan, the court will enter an order either
11 amending this Scheduling Order or advising the parties that this Scheduling Order is to
12 remain in effect unchanged.

13 **Defendants are responsible for initiating the conference between the parties, and**
14 **for drafting and submission of the Joint Discovery Plan.**

15 DATED this 21st day of August, 2007.

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19 Jacqueline Marshall
20 United States Magistrate Judge
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