

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

KYLE BERMINGHAM,

Plaintiff,

v.

Case No: 5:12-cv-37-Oc-37PRL

**CITY OF CLERMONT, FLORIDA and
STEPHEN GRAHAM**

Defendants.

ORDER

This matter is before the Court on Plaintiff's Emergency Motion for Leave to Replace Deceased Expert Witness. (Doc. 65). Defendants have filed responses in opposition. (Docs. 67 & 68).

Plaintiff seeks leave to replace his deceased expert witness, Ronald G. Lynch, with another expert in the field of law enforcement practices, Chuck Drago. While Defendants dispute whether Plaintiff knew or should have known about Mr. Lynch's death sooner, the Court will accept Plaintiff's counsel's representation that he did not learn of Mr. Lynch's death until August 12, 2013. Plaintiff contends that Mr. Drago's expert testimony will be necessary to prosecute his remaining First Amendment claims. Under these circumstances, the undersigned finds that Plaintiff has shown the requisite good cause to justify replacing his expert witness at this late stage in the proceedings.

Accordingly, and upon due consideration, Plaintiff's Emergency Motion (Doc. 65) is **GRANTED** to the extent stated below. Plaintiff may substitute Chuck Drago as his expert witness, limited to the same subject matters upon which Mr. Lynch opined. However, Plaintiff's

requested time frame for serving a replacement expert report is unworkable in light of existing deadlines. Plaintiff shall serve Mr. Drago's expert report by the close of business on **August 26, 2013**. If additional time is needed for the preparation of his expert report – which likely will necessitate the extension of other pretrial deadlines and/or continuance of trial – Plaintiff shall file a separate motion.

If, after reviewing Mr. Drago's report, Defendants determine that they need to depose him, they may file a motion with the Court. Otherwise, given the disclosure requirements of Rule 26, the August 26, 2013 deadline should provide Defendants adequate time to file a motion *in limine* challenging Mr. Drago's expert report.

DONE and ORDERED in Ocala, Florida on August 19, 2013.



PHILIP R. LAMMENS
United States Magistrate Judge

Copies furnished to:

Counsel of Record
Unrepresented Parties