

TAB 1

-----Original Message-----

From: Elizabeth Westfall
Sent: Wed 4/26/2006 12:26 PM
To: BNorris199@aol.com; mcirullo@cityatty.com; TArpen@coj.net;
EHRlich@miamidade.gov; mhalberstam@paulweiss.com; rlabasky@yvlaw.net;
'pva@gray-robinson.com'
Cc: emincberg@pfaw.org; mjhanson@hpjlaw.com
Subject: Diaz v. Cobb -- Rule 26(f) conference

Counsel: I write to request that we schedule a Rule 26(f) teleconference on either Thursday, April 27, or Monday, May 1. Please let me know if you are available for a call on those dates. In addition, attached please find a draft Joint Discovery Plan. Please review in advance of our conference.

<<Rule 26(f) discovery plan draft to defs.doc>>

Sincerely,

Elizabeth S. Westfall
Senior Attorney
Advancement Project
1730 M Street, NW
Suite 910
Washington, DC 20036
202-728-9557, Ex. 309 (ph.)
202-728-9558 (fax)



Rule 26(f) discovery plan draft to defs.doc

DRAFT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.04-22572-CIV-KING

-----	X
EMMA YAIZA DIAZ; AMERICAN	:
FEDERATION OF LABOR AND CONGRESS OF	:
INDUSTRIAL ORGANIZATIONS; AMERICAN	:
FEDERATION OF STATE, COUNTY AND	:
MUNICIPAL EMPLOYEES, AFL-CIO; FLORIDA	:
PUBLIC EMPLOYEES COUNCIL 79, AFSCME,	:
AFL-CIO, and SERVICE EMPLOYEES	:
INTERNATIONAL UNION	:
	:
Plaintiffs,	:
	:
vs.	:
	:
SUE M. COBB, Secretary of State of Florida;	:
BRENDA C. SNIPES, Broward County Supervisor	:
of Elections; JERRY HOLLAND, Duval County	:
Supervisor of Elections; LESTER SOLA, Miami-	:
Dade County Supervisor of Elections; BILL	:
COWLES, Orange County Supervisor of Elections;	:
and ARTHUR ANDERSON, Palm Beach County	:
Supervisor of Elections,	:
	:
Defendants.	:
	:
	:
	:
	:
	:
	:
-----	X

JOINT DISCOVERY REPORT PURSUANT TO FED. R. CIV. P. 26(F)

Pursuant to Fed. R. Civ. P. 26(f), the attorneys of record have conferred and have agreed on the following discovery schedule:

I. INITIAL DISCLOSURES PURSUANT TO RULE 26(A)(1)

The parties agree that they shall exchange initial disclosures as required by Rule 26(a)(1) of the Federal Rules of Civil Procedure and Local Rule 26.1 on May 12, 2006.

II. SUBJECTS ON WHICH DISCOVERY MAY BE NEEDED AND DISCOVERY DEADLINE

The parties agree that discovery may be needed on the following subjects:

- A. Policies, procedures, instructions and directives related to (1) the processing of Florida's voter registration application as to the checkboxes concerning citizenship, mental incapacity, and/or felon status; (2) notice provided to an applicant when his or her registration application has been deemed incomplete; (3) circumstances under which an applicant may correct or amend his or her registration application; and (4) the processing of federal voter registration applications
- B. Communications between or among any or all defendants concerning the topics set forth in II(A), *supra*.
- C. Voter registration applications which a defendant Supervisor rejected on the ground that the applicant did not check the box related to citizenship, mental incapacity, and/or felon status
- D. All documents related efforts by the individual plaintiffs, or the union plaintiffs' members, to register to vote in Florida
- E. Notices sent to voter registration applicants whose applications were deemed incomplete because the applicant did not check the box related to citizenship, mental incapacity, and/or felon status, including but not limited to (a) the content of such notices; (b) the date such notices were prepared; (c) the date such notices were mailed to applicants; (d) the applicants' response, if any, to such notice; and (e) steps taken in response to the applicants' responses
- F. Florida's central voter database, in use before January 1, 2006, and Florida's statewide database created pursuant to the Help America Vote Act
- G. The implementation of Florida's amendments to its election code concerning the processing of voter registration applications on which the applicant has not checked the citizenship box, felon box, and/or mental incapacity box,

Fla. Stat. §§ 97.052, 97.053; the provision of notice to applicants of the disposition of their application, including any and all deficiencies on their application, *id.* at 97.052(6), 97.073; the ability of voter registration applicants to submit corrections to their voter registration application after the close of the registration books, *id.* at 97.055(1); and entry of voter registration applications into the statewide voter registration system. *Id.* at 98.015

- H. Defendant Supervisor of Elections' preparation of precinct registrars between the close of the registration books and election day.
- I. To the extent not already included in topics II(A)-(H), *supra*, (1) all individuals possessing any information or knowledge concerning any fact and/or allegation set forth in the Complaint, or any information or knowledge of any fact that support any defense(s) to any allegation; and (2) all documents concerning any fact and/or allegation set forth in the Complaint, or fact that support any defense(s) to any allegation

All discovery shall be completed by July 15, 2006. In the event that the parties believe that additional time is needed for discovery, or a motion to compel is pending, the parties, or party, may request an extension of the discovery deadline from the Court.

III. CHANGES IN LIMITS ON DISCOVERY IMPOSED BY FEDERAL OR LOCAL RULES

The parties agree to respond to all interrogatories and document requests within twenty (20) days. Parties shall commence the production of electronic data within ten (10) days. Parties shall commence production of all other documents within fourteen (14) days after the date that document requests were served.

Dated this _____ day of May 2006.

Respectfully Submitted,

Counsel For Plaintiffs

Mary Jill Hanson
Hanson, Perry & Jensen, P.A.
400 Executive Center Drive, Suite 207
West Palm Beach, Florida 33401
Tel: (561) 686-6550
Fax: (561) 686-2802
Email: mjhanson@hpjlaw.com

**Judith A. Browne
**Elizabeth S. Westfall
Advancement Project
1730 M. Street, NW, Suite 910
Washington, DC 20036
Phone: 202-728-9557
Fax: 202-728-9558
email: ewestfall@advancementproject.org

**Michael Halberstam
Paul, Weiss, Rifkind, Wharton
& Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Phone: 212-373-3000
Fax: 212-757-3990
email: mhalberstam@paulweiss.com

* Jonathan P. Hiatt
AFL-CIO
815 Sixteenth Street, NW
Washington, DC 20006
Phone: 202-637-5053
Fax: 202-637-5323
email: jhiatt@aficio.org

Manny Anon, Jr.
Florida Public Employees Council 79
3064 Highland Oaks Terrace
Tallahassee, Florida 32301
Phone: 850-222-0842
Fax: 850-224-6926
email: m_anon@afscmeffl.org

**Elliot Minberg
People for the American Way Foundation
2000 M Street, Suite 400
Washington, DC 20036
Phone: 202-467-2392
Fax: 202-293-2672
email: minberg@pfaw.org

* Judith A. Scott
* John J. Sullivan
SEIU
1313 L. Street, NW
Washington, DC 20005
Phone: 202-898-3453
Fax: 202-898-3323
email: sullivaj@seiu.org

* Pro hac vice motion to be filed.

** Admitted pro hac vice.

Counsel for Defendants

Peter Antonacci
Gray Robinson, P.A.
301 S. Bronough Street, Suite 600
Post Office Box 11189
Tallahassee, Florida 32302-3189
Phone: 850-577-9090
Fax: 850-577-3311
email: pva@gray-robinson.com

Tracey I. Arpen, Jr.
Deputy General Counsel
Duval County
City Hall, St. James Building
117 West Duval Street, Suite 480
Jacksonville, Florida 32202
Phone: 904-630-1700
Fax: 904-630-2388
email: tarpen@coj.net

Jeffrey P. Ehrlich
Miami-Dade County Attorney's Office
111 N.W. First Street, Suite 2810
Miami, Florida 33128
Phone: 305-375-5151
Fax: 305-375-5634
email: ehrich@miamidade.gov

Ronald A. Labasky
Young Van Assenderp, P.A.
225 S. Adams Street, Suite 200
P.O. Box 1833
Tallahassee, Florida 32302
Phone: 850-222-7206
Fax: 850-561-6834
email: labasky@wlaw.net

Mike Cirullo
Goren, Cheroff, Doody & Ezrol, P.A.
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308
Phone: 954-771-4500
Fax: 954-771-4923
email: cirullo@cityatty.com

Burnadette Norris-Weeks
100 S.E. 6th Street
Ft. Lauderdale, Florida 33301-3422
Phone: 954-768-9770
Fax: 954-768-9790
email: bnorris199@aol.com

Ernst Mueller
Office of City Attorney
117 W. Duval Street, Suite 480
Jacksonville, Florida 32202-3700
Phone: 904-630-1700
Fax: 904-630-1731
email: emueller@coj.net

TAB 2

-----Original Message-----

From: Elizabeth Westfall
Sent: Mon 5/1/2006 2:07 PM
To: 'BNorris199@aol.com'; 'mcirullo@cityatty.com'; 'TArpen@coj.net';
'EHRlich@miamidade.gov'; 'mhalberstam@paulweiss.com'; 'rlabasky@yvlaw.net';
'pva@gray-robinson.com'
Cc: 'emincberg@pfaw.org'; 'mjhanson@hpjlaw.com'
Subject: RE: Diaz v. Cobb -- Rule 26(f) conference

Counsel -- I have not received a response to my request of April 26, set forth below, for a Rule 26(f) teleconference. Please let me know when you are available for a teleconference tomorrow, Tuesday, May 2, or Wednesday, May 3.

I have attached a draft Joint Discovery Plan for your review.

Sincerely,

Elizabeth Westfall

<<Rule 26(f) discovery plan draft to defs.doc>>

-----Original Message-----

From: Elizabeth Westfall
Sent: Wednesday, April 26, 2006 12:27 PM
To: BNorris199@aol.com; mcirullo@cityatty.com;
TArpen@coj.net; EHRlich@miamidade.gov; mhalberstam@paulweiss.com;
rlabasky@yvlaw.net; 'pva@gray-robinson.com'
Cc: emincberg@pfaw.org; mjhanson@hpjlaw.com
Subject: Diaz v. Cobb -- Rule 26(f) conference

Counsel: I write to request that we schedule a Rule 26(f) teleconference on either Thursday, April 27, or Monday, May 1. Please let me know if you are available for a call on those dates. In addition, attached please find a draft Joint Discovery Plan. Please review in advance of our conference.

<< File: Rule 26(f) discovery plan draft to defs.doc >>

Sincerely,

Elizabeth S. Westfall
Senior Attorney
Advancement Project
1730 M Street, NW
Suite 910
Washington, DC 20036
202-728-9557, Ex. 309 (ph.)
202-728-9558 (fax)



Rule 26(f) discovery plan draft to defs.doc

TAB 3

From: Elizabeth Westfall
Sent: Wed 5/3/2006 10:58 AM
To: 'Peter Antonacci'; BNorris199@aol.com; mcirullo@cityatty.com; TARpen@coj.net; EHRLICH@miamidade.gov; Oren Rosenthal; mhalberstam@paulweiss.com; rlabasky@yvlaw.net
Cc: mjhanson@hpjlaw.com; emincberg@pfaw.org
Subject: RE: Diaz v. Cobb -- Rule 26(f) conference

Counsel: Per my telephone conversation with Mr. Antonacci of May 1, please confirm in writing by close of business today (May 3) that your client will neither confer with plaintiffs' counsel, pursuant to Fed. R. Civ. P. 26(f), nor produce initial disclosures, pursuant to Fed. R. Civ. P. 26(a)(1) and Local Rule 26.1(A), pending the Court's consideration of defendants' motions to dismiss and for a more definite statement.

Sincerely,

Eizabeth S. Westfall

-----Original Message-----

From: Peter Antonacci [mailto:PVA@gray-robinson.com]
Sent: Monday, May 01, 2006 2:25 PM
To: Elizabeth Westfall; BNorris199@aol.com; mcirullo@cityatty.com; TARpen@coj.net; EHRLICH@miamidade.gov; Oren Rosenthal; mhalberstam@paulweiss.com; rlabasky@yvlaw.net
Cc: mjhanson@hpjlaw.com; emincberg@pfaw.org
Subject: RE: Diaz v. Cobb -- Rule 26(f) conference

Defense counsel experienced a communication mishap with respect to a collective response when your e-mail request arrived last week. My apology for the slow response. I'll call you momentarily.

Peter Antonacci
GrayRobinson, P.A.
301 S. Bronough Street, Ste. 600
Post Office Box 11189
Tallahassee FL 32302-3189
tel. 850/222-7717 or 577-9090
fax 850/577-3311
e: pva@gray-robinson.com

This e-mail contains legally privileged and confidential information intended only for the individual or entity named within the message. Should the intended recipient forward this message to another person or party, that action could constitute a waiver of the attorney/client privilege. If the reader of this message is not the intended recipient, or the

agent responsible to deliver it to the intended recipient, you are hereby notified that any review, dissemination, distribution or copying of this communication is prohibited. If this communication was received in error, please notify us by reply e-mail and delete the original message.

>>> "Elizabeth Westfall" <ewestfall@advancementproject.org> 05/01/06 2:07 PM >>>

Counsel -- I have not received a response to my request of April 26, set forth below, for a Rule 26(f) teleconference. Please let me know when you are available for a teleconference tomorrow, Tuesday, May 2, or Wednesday, May 3.

I have attached a draft Joint Discovery Plan for your review.

Sincerely,

Elizabeth Westfall

<<Rule 26(f) discovery plan draft to defs.doc>>

> -----Original Message-----

> From: Elizabeth Westfall
> Sent: Wednesday, April 26, 2006 12:27 PM
> To: BNorris199@aol.com; mcirullo@cityatty.com; TArpen@coj.net; EHRlich@miamidade.gov; mhalberstam@paulweiss.com; rlabasky@yvlaw.net; 'pva@gray-robinson.com'
> Cc: emincberg@pfaw.org; mjhanson@hpjlaw.com
> Subject: Diaz v. Cobb -- Rule 26(f) conference

> Counsel: I write to request that we schedule a Rule 26(f) teleconference on either Thursday, April 27, or Monday, May 1. Please let me know if you are available for a call on those dates. In addition, attached please find a draft Joint Discovery Plan. Please review in advance of our conference.

> << File: Rule 26(f) discovery plan draft to defs.doc >>

> Sincerely,

> Elizabeth S. Westfall
> Senior Attorney
> Advancement Project
> 1730 M Street, NW
> Suite 910
> Washington, DC 20036
> 202-728-9557, Ex. 309 (ph.)
> 202-728-9558 (fax)

TAB 4

From: Peter Antonacci [mailto:PVA@gray-robinson.com]
Sent: Thu 5/4/2006 2:22 PM
To: Elizabeth Westfall
Cc:
Subject: Diaz

I just spoke with Mike Cirullo who reports upon his conversation of earlier today with you as follows:
You apparently believe that the telephone conversation between you and I this Monday afternoon regarding the defendant's collective response to your request to conduct a Rule 26 (f) conference concluded with an invitation on my part for the Plaintiff's to serve Requests for Production. To the extent that is your belief, our recollections of that conversation bear little resemblance. And, to the extent that you are as certain of your recollection as I am of my own, I ask that you no longer rely upon yours going forward as the only message I was authorized to convey was a firm refusal to engage in a Rule 26 (f) process pending the outcome of the pending defensive motions. If you interpreted my acknowledgement that the Plaintiffs are free to respond to this refusal to confer in whatever manner you choose, so be it. But, I did not roll out a discovery welcome mat for the plaintiffs. If you then believed otherwise, perhaps further discussion would have been helpful. Thanks

Peter Antonacci
GrayRobinson, P.A.
301 S. Bronough Street, Ste. 600
Post Office Box 11189
Tallahassee FL 32302-3189
tel. 850/222-7717 or 577-9090
fax 850/577-3311
e: pva@gray-robinson.com

This e-mail contains legally privileged and confidential information intended only for the individual or entity named within the message. Should the intended recipient forward this message to another person or party, that action could constitute a waiver of the attorney/client privilege. If the reader of this message is not the intended recipient, or the agent responsible to deliver it to the intended recipient, you are hereby notified that any review, dissemination, distribution or copying of this communication is prohibited. If this communications was received in error, please notify us by reply e-mail and delete the original message.

TAB 5

-----Original Message-----

From: Peter Antonacci [mailto:PVA@gray-robinson.com]
Sent: Thu 5/4/2006 3:07 PM
To: Elizabeth Westfall
Cc: Aurora Vasquez; BNorris199@aol.com; mcirullo@cityatty.com;
TArpen@coj.net; Jill Hanson (E-mail); EHRLICH@miamidade.gov; Michael
Halberstam (E-mail); rlabasky@yvlaw.net
Subject: RE: Diaz

Thanks---You and I have found agreement in that it is the plaintiff's
right to do as you wish in light of the defendants' R. 26 confer
position.

Peter Antonacci
GrayRobinson, P.A.
301 S. Bronough Street, Ste. 600
Post Office Box 11189
Tallahassee FL 32302-3189
tel. 850/222-7717 or 577-9090
fax 850/577-3311
e: pva@gray-robinson.com

This e-mail contains legally privileged and confidential
information intended only for the individual or entity named
within the message. Should the intended recipient forward
this message to another person or party, that action could
constitute a waiver of the attorney/client privilege. If the
reader of this message is not the intended recipient, or the
agent responsible to deliver it to the intended recipient,
you are hereby notified that any review, dissemination,
distribution or copying of this communication is prohibited.
If this communications was received in error, please notify
us by reply e-mail and delete the original message.

>>> "Elizabeth Westfall" <ewestfall@advancementproject.org> 05/04/06
3:04 PM >>>

Pete -- We definitely have different recollections of our conversation.
After you advised me that defendants would not produce initial
disclosures as required by Rule 26(f) and the Local Rules, you said that
plaintiffs should feel free to "serve discovery." In light of
defendants' refusal to confer under Rule 26(f) or produce initial
disclosures, and the Court's clear statement during the April 10
scheduling conference that discovery could be conducted pending the
resolution of defendants' non-dispositive motions, plaintiffs are well
within their right to serve written discovery requests at this time.

Sincerely,

Elizabeth

-----Original Message-----

From: Peter Antonacci [mailto:PVA@gray-robinson.com]
Sent: Thursday, May 04, 2006 2:22 PM
To: Elizabeth Westfall
Subject: Diaz

I just spoke with Mike Cirullo who reports upon his conversation of earlier today with you as follows:
You apparently believe that the telephone conversation between you and I this Monday afternoon regarding the defendant's collective response to your request to conduct a Rule 26 (f) conference concluded with an invitation on my part for the Plaintiff's to serve Requests for Production. To the extent that is your belief, our recollections of that conversation bear little resemblance. And, to the extent that you are as certain of your recollection as I am of my own, I ask that you no longer rely upon yours going forward as the only message I was authorized to convey was a firm refusal to engage in a Rule 26 (f) process pending the outcome of the pending defensive motions. If you interpreted my acknowledgement that the Plaintiffs are free to respond to this refusal to confer in whatever manner you choose, so be it. But, I did not roll out a discovery welcome mat for the plaintiffs. If you then believed otherwise, perhaps further discussion would have been helpful. Thanks

Peter Antonacci
GrayRobinson, P.A.
301 S. Bronough Street, Ste. 600
Post Office Box 11189
Tallahassee FL 32302-3189
tel. 850/222-7717 or 577-9090
fax 850/577-3311
e: pva@gray-robinson.com

This e-mail contains legally privileged and confidential information intended only for the individual or entity named within the message. Should the intended recipient forward this message to another person or party, that action could constitute a waiver of the attorney/client privilege. If the reader of this message is not the intended recipient, or the agent responsible to deliver it to the intended recipient, you are hereby notified that any review, dissemination, distribution or copying of this communication is prohibited. If this communications was received in error, please notify us by reply e-mail and delete the original message.