

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

M. PETER KUCK, :
 :
 Plaintiff, : CIVIL ACTION NO. 3:07cv1390 (VLB)
 :
 v. :
 :
 JOHN A. DANAHER, III, et al., :
 :
 Defendants. : AUGUST 20, 2010

FORM 26(f) REPORT OF PARTIES' PLANNING MEETING

Date Complaint Filed: September 17, 2007

Date of Defendant's Appearance: October 31, 2007

Date Complaint Served:

John A. Danaher, III (I/O) November 1, 2007/October 11, 2007

Albert J. Masek, Jr. (I/O) November 1, 2007/October 11, 2007

Pursuant to Fed. R. Civ. P. 16(b), 26(f) and D. Conn. L. Civ. R. 26(f), a conference was held on August 5, 2010: The participants were:

- Rachel M. Baird, Attorney for Plaintiff M. Peter Kuck
- Robert D. Snook, Assistant Attorney General for John A. Danaher, III (I/O) and Albert J. Masek, Jr. (I/O)

I. CERTIFICATION

Undersigned counsel certify that, after consultation with their clients, they have discussed the nature and basis of the parties' claims and defenses and any possibilities for achieving a prompt settlement or other resolution of the case and, in consultation with their clients, have developed the following proposed case

management plan. Counsel further certify that they have forwarded a copy of this report to their clients.

II. JURISDICTION

A. Subject Matter Jurisdiction

Subject matter jurisdiction in the federal court is invoked pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343(a)(3), (4), and 42 U.S.C. §§ 1983, 1988.

B. Personal Jurisdiction

Personal Jurisdiction is not contested

BRIEF DESCRIPTION OF CASE

A. Claims of Plaintiff

The original Complaint in three counts alleged denials of procedural and substantive due process in violation of the Fifth and Fourteenth Amendments to the United States Constitution and retaliation in violation of the First and Fourteenth Amendments to the United States Constitution. Following appeal and remand, the procedural due process claim stated in Count One remains. The court has set a deadline of September 3, 2010, for Plaintiff to file an Amended Complaint.

The factual allegations supporting Plaintiff's due process claim and those claims anticipated for inclusion the Amended Complaint demonstrate the denial of a timely and meaningful opportunity for Plaintiff to be heard on the denial of his application to renew his state permit to carry a pistol or revolver ("state permit"). The unlawful basis for the denial of Plaintiff's renewal application created a retaliatory *de facto* period of suspension not contemplated under the Connecticut Constitution, state statutes, and the Second Amendment, as incorporated under the Fourteenth Amendment, to the

United States Constitution. Plaintiff claims a denial of his state and federal right to possess a state permit and lawfully carry a pistol or revolver.

B. Defenses and Claims of Defendant/s

The defendants deny each and every one of plaintiff's claims. The defendants anticipate filing a motion to dismiss on or about November 30, 2010 pursuant to Fed. R. Civ. Pro. 12(b)(1), (6). The defendants John A. Danaher, III and Albert J. Masek, Jr. contend that they are not responsible for scheduling appeals before the Board of Firearm Permit Examiners (the "Board"), and thus the plaintiff lacks standing over these defendants and also has failed to state a claim for which relief can be given for his substantive due process claims. The defendants also respectfully submit that this matter is not appropriate to be pursued as a class action, nor is the plaintiff an appropriate class representative.

C. Defenses and Claims of Third Party Defendant/s

No third party defendants have been identified.

IV. STATEMENT OF UNDISPUTED FACTS

Counsel certify that they have made a good faith attempt to determine whether there are any material facts that are not in dispute. The parties state that the following material facts are undisputed:

1) Defendants Commissioner Danaher and Captain Masek are responsible for the Special Licensing and Firearms Unit (SLFU) within the Office of Administrative Services within the Department of Public Safety (DPS).

2) The SLFU processes all applications for permanent pistol or revolver permits in the State.

3) If an application for a permanent pistol or revolver permit is denied, an applicant may file an administrative appeal from the denial to the Board of Firearm Permit Examiners (the "Board").

4) The Plaintiff, M. Peter Kuck, served as Secretary of the Board until November 2007.

5) On or about March 19, 2007, the plaintiff filed his application to renew his personal pistol or revolver permit.

7) When his renewed permit was not issued, the plaintiff filed an appeal with the Board.

V. CASE MANAGEMENT PLAN

A. Standing Order on Scheduling in Civil Cases

The parties request modification of the deadlines in the Standing Order on Scheduling in Civil Cases as follows:

B. Scheduling Conference with the Court

The parties do not request a pretrial conference with the Court before entry of a scheduling order pursuant to Fed. R. Civ. P. 16(b).

C. Early Settlement Conference

1. The parties certify that they have considered the desirability of attempting to settle the case before undertaking significant discovery or motion practice.

2. The parties do not request an early settlement conference.

3. The parties have no preference regarding a settlement conference with the presiding judge, a magistrate judge, a parajudicial officer, or special masters, should a conference occur.

4. The parties do not request a referral for alternative dispute resolution pursuant to D. Conn. L. Civ. R. 16.

D. Joinder of Parties and Amendment of Pleadings

1. The Court has set a deadline of September 3, 2010, for Plaintiff to file an Amended Complaint. Plaintiff shall have until September 3, 2010, to join any additional parties.

2. The defendants anticipate filing a motion to dismiss on February 25, 2011.

E. Discovery

a. The parties agree that initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) be waived and that these disclosures be incorporated into the following discovery schedule.

b. The parties anticipate that discovery will be needed on the following subjects:

- All subjects and issues fairly arising out of Plaintiff procedural due process claim and Plaintiff's claim for damages;
- All subjects and issues fairly arising out of Plaintiff's allegations of class action status;
- All subjects and issues fairly arising from and directed at responding to the Second Circuit's direction that "[i]t remains to

be seen ... whether Kuck has named an appropriate defendant for this case to proceed as an individual damages suit or a putative class-action.”

c. Discovery will not be conducted in phases. All discovery including depositions of expert witnesses pursuant to Fed. R. Civ. P. 26(b)(4) will be completed by October 31, 2011.

d. The Plaintiff anticipates a total of 12 depositions of fact witnesses. The Defendants anticipate between 5 and 10 depositions of fact witnesses.

e. The parties may request permission to serve more than 25 interrogatories.

f. The Plaintiff will designate all trial experts and provide opposing counsel with reports from retained experts pursuant to Fed. R. Civ. P. 26(a) by July 15, 2011. Depositions of any such experts will be completed by September 5, 2011.

g. The Defendants may call expert witnesses at trial. Defendants will designate all trial experts and provide opposing counsel with reports from retained experts pursuant to Fed. R. Civ. P. 26(a)(2) by no later than September 30, 2011. Depositions of such experts will be completed by no later than October 31, 2011.

h. A damages analysis will be provided by any party who has a claim or counterclaim for damages by August 1, 2011.

i. Undersigned counsel have discussed the disclosure and preservation of electronically stored information, including, but not limited to, the form in which such data shall be produced, search terms to be applied in connection with the retrieval and production of such information, the location and format of electronically stored

information, appropriate steps to preserve electronically stored information, and the allocation of costs of assembling and producing such information.

The parties agree to the following procedures for the preservation, disclosure and management of electronically stored information:

The parties agree that a request for production of documents shall encompass ESI as included in Rule 34 of the Federal Rules of Civil Procedure, unless otherwise specified by the requesting party.

The parties agree to produce non-privileged ESI in a readily usable standard CD or DVD format. The parties agree to continue to discuss the disclosure and preservation of ESI , including search terms, as discovery progresses in the case.

j. Undersigned counsel have discussed discovery procedures that minimize the risk of waiver of privilege or work-product protection, including procedures for asserting privilege claims after production.

The parties agree to the following procedures for asserting claims of privilege after production:

If information produced in discovery is subject to a claim of privilege or protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy, the specified information, and any copies it has,; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a

determination of the claim. The producing party must preserve the information until the claim is resolved.

If information produced in discovery or of protection as trial preparation material, and the party making the claim notifies any party that received the information of the claim and the basis for it within 30 days of production, the fact that the information subject to such claim was produced shall not constitute a waiver of any privilege or protection.

F. Dispositive Motions:

Dispositive motions will be filed on or before March 30, 2012.

G. Joint Trial Memorandum

The joint trial memorandum required by the Standing Order on Trial Memoranda in Civil Cases will be filed within 30 days after the entry on the ruling of the last dispositive motion. If dispositive motions are not filed, the joint trial memorandum required by the Standing Motion on Trial Memoranda in Civil Cases will be filed ninety (90) days after the completion of all discovery.

VI. TRIAL READINESS

This case will be ready for trial by June 30, 2012, or 60 days after the Court's ruling on any dispositive motion, whichever is later.

As officers of the Court, undersigned counsel agree to cooperate with each other and the court to promote the just, speedy and inexpensive determination of this action.

Respectfully submitted,

PLAINTIFF M. PETER KUCK

BY: /s/
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**DEFENDANTS JOHN A. DANAHER, III & ALBERT J. MASEK, JR., in their official
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