

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

EMILE BAIR,

Plaintiff,

v.

ROSE TOWNSHIP,

Defendant.

Case No. 2:19-cv-10170-SJM-MKM

Hon. Stephen J. Murphy III  
Magistrate Judge Mona K. Majzoub

---

SCOTT P. BATEY (P54711)  
Batey Law Firm, PLLC  
Attorney for Plaintiff  
30200 Telegraph Road, Suite 400  
Bingham Farms, MI 48025  
(248) 540-6800-telephone  
(248) 540-6814-fax  
[sbatey@bateylaw.com](mailto:sbatey@bateylaw.com)

---

ROBERT J. SEIBERT (P32098)  
Seibert and Dloski, PLLC  
Attorney for Defendant  
19500 Hall Road, Suite 101  
Clinton Township, MI 48038  
(586) 469-3800-telephone  
(586) 469-2443-fax  
[rseibert@seibertanddloski.com](mailto:rseibert@seibertanddloski.com)

---

**JOINT DISCOVERY PLAN**

NOW COMES Plaintiff, Emile Bair, by and through his attorneys, Batey Law Firm, PLLC and Defendant, Rose Township, a Michigan municipal corporation, by and through its attorneys, Seibert and Dloski, PLLC, and set forth the following Joint Discovery Plan pursuant to this Court's January 29, 2019 Order:

A Rule 16 Scheduling Conference is scheduled for March 26, 2019 at 10:00 a.m. Appearing for the parties as counsel will be:

For Plaintiff:        Scott P. Batey

Batey Law Firm, PLLC

For Defendant: Robert J. Seibert  
Seibert and Dloski, PLLC

1. **Jurisdiction:** The basis for the Court's jurisdiction is:

Federal Question, 28 U.S.C. § 1331: Americans with Disabilities, 42 U.S.C. 12101, *et seq.*

2. **Jury or Non-Jury:** This case is to be tried before a jury.

3. **Statement of the Case:** This case involves:

a. Statement of Claims

This is a American with Disabilities Act ("ADA") and age discrimination case in which Plaintiff was disabled under the ADA with Parkinson's disease which substantially interferes with his ability to move and ambulate. The only restroom at Defendant's place of business where Plaintiff worked was in the basement. Mr. Bair's disability prevented him from walking up and down the stairs or use the elevator. Plaintiff complained to Defendant and asked that Defendant provide him a reasonable accommodation to allow him to use the bathroom. Defendant, admitted to Plaintiff it needed to do something to fix the elevator or allow Plaintiff some way to use the restroom. However, nothing was done to accommodate Plaintiff.

In addition to refusing to accommodate Mr. Bair, Defendant also created a hostile work environment due to his age and disability by mocking him and teasing him that “Emile can’t walk,” “Emile can’t go up and down the stairs” and “Emile can’t use the elevator.” It became apparent to Plaintiff that Defendant was attempting to force him out of his position.

In January, 2018 Plaintiff fell ill and entered a rehabilitation facility. During Plaintiff’s stay in the rehabilitation facility Defendant began to put pressure on him to resign from his position.

Despite verbal and written comments from Plaintiff that he had no intention of resigning on January 29, 2018, township Deputy Treasurer, Denise Hanley arrived at his room, knowing he would be alone and produced a letter of resignation prepared by Defendant and instructed Plaintiff to sign the letter of resignation. Plaintiff who was half asleep, under heavy sedation and unable to make an informed decision signed the letter of resignation which Defendant accepted against Plaintiff’s wife’s objection. Defendant accomplished a modern-day coup d'etat when it got Plaintiff to sign a letter of resignation while he was under heavy medication and half asleep.

b. Statement of Defenses

Defendant is a general law Township. Plaintiff held the position of the elected Rose Township Constable for over 25 years. In early 2016, Plaintiff’s

health substantially deteriorated. As the result of his deteriorating health, Plaintiff notified Defendant that he intended to retire in early 2017 assuming he was reelected to another four-year term in November of 2016. Plaintiff was re-elected in November, 2016 and notified Defendant of his intent to retire. In January of 2018, Plaintiff signed a letter of resignation that he requested the Township Board to accept at a Board meeting. On March 14, 2018 the Township Board voted to accept Plaintiff's resignation as Constable. It is Defendant's position that Plaintiff voluntarily resigned his position of Township Constable.

Defendant contends that Plaintiff's claim brought pursuant to the Age Discrimination Act of 1967, 29 U.S.C. §621 is barred because Plaintiff was not an employee of Defendant at the time of the alleged discrimination. Specifically, 29 U.S.C. §630(f) provides, in relevant part, "that the term 'employee' shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof . . . ." In addition, Defendant does not constitute an "employer" for purposes of the Act because it does not employ 20 or more employees.

It is Defendant's position that Plaintiff's claims under the ADA are without merit. The Rose Township hall has two restrooms available, one of which is located in the basement of the facility and the other located on the main floor. Both restrooms were available for Plaintiff's use. In 2011, Defendant retained

Redstone Architects to perform an inspection of the Township hall and make recommendations concerning compliance with the ADA. As the result of the recommendations by Redstone Architects, Defendant installed an ADA-compliant lift which provided handicap access to all floors of the Township hall. In addition, an ADA-accessible ramp is located on the exterior of the building to allow full access to the Township hall. The Township hall is ADA-compliant and the Plaintiff had complete access to all facilities.

4. **Pendent State Claims:** This case does include pendent state claims: Count II of Plaintiff's Complaint asserts age discrimination claims under the Michigan Elliott-Larsen Civil Rights Act, MCL 37.2201 *et seq.* Defendant has no objection to this Court exercising jurisdiction over the Count II state law claims.

5. **Joinder of Parties and Amendment of Pleadings:** The parties expect to file all motions for joinder of parties to this action and to file all motions to amend the pleadings by April 15, 2019.

6. **Disclosures and Exchanges:** The parties have agreed to make available the following documents without the need for a formal request for production:

From Plaintiff to Defendant: Plaintiff will voluntarily produce all non-privileged documents in its possession relating to Plaintiff's employment and termination as Constable for Defendant.

From Defendant to Plaintiff: Defendant will voluntarily produce all non-privileged documents in its possession relating to Plaintiff's service as the duly-elected Constable for Defendant.

7. **Discovery:** The parties believe that all discovery proceedings can be completed by September 15, 2019. The parties recommend the following discovery plan, and acknowledge that if the Court believes that discovery motions have been filed unnecessarily, in bad faith, or for vexatious or tactical reasons, the Court may appoint a Discovery Master to shift the costs of disposing of these motions from the Court to the parties:

Discovery Begins:	04/01/2019
Initial Disclosures Due:	05/01/2019
Witness List Disclosures Due:	06/01/2019
Expert Disclosures Due:	07/01/2019
Discovery Ends:	09/15/2019
Disposition Motions Due:	11/01/2019

8. **Disclosure/Discovery of Electronically Stored Information:** The parties have discussed the production of electronically stored information and suggest that such information be handled as follows:

Although the parties do not anticipate that there will be substantial electronically stored information ("ESI") exchanged during the course of discovery, the parties will follow the strict requirements of Rule 34. The parties will produce all requested ESI in Microsoft Word format or other reasonably

available software formats requested by a party. In the event a party requests ESI through the search of the opposing party's servers or hard drives, the parties will negotiate the terms of Protective Order and allow such searches only by qualified forensic computer experts.

**9. Assertion of Claims of Privilege or Work-Product Immunity After Production:**

The parties agree to use privilege and/or work-product logs when a party asserts that requested discovery information is subject to a privilege or constitutes protected work-product. The log shall reasonably identify the document subject to the privilege, set forth the date of the document, the sender and recipient of the document and the basis for the privilege being asserted by the party. The party requesting the privilege may, upon receipt of the privilege or work-product log file an appropriate motion with the Court seeking an order compelling the production of the challenged documents.

**10. Motions:** The parties acknowledge that E.D. Mich. LR 7.1 requires a moving party to ascertain whether any motion will be opposed. All motions shall affirmatively state the efforts of the moving party to comply with the obligation created by Rule 7.1. All nondispositive motions shall be accompanied by a certificate setting forth in detail the efforts of the moving party to comply with the obligation created by Rule 7.1. All discovery motions shall be accompanied by a

certificate and any relevant documentation or correspondence detailing the movant's attempts to seek resolution of the discovery dispute before filing the motion.

The following dispositive motions are contemplated by each party:

Defendant intends to file a Motion for Summary Judgment pursuant to Fed R Civ P 56 at the close of discovery.

11. **Alternative Dispute Resolution:** The parties acknowledge that the Court reserves the right under Local Rule 16 to order alternative dispute resolution, and recommend that this case be submitted to the following method(s) of alternative dispute resolution: The parties agree to participate in voluntary nonbinding facilitation subsequent to the close of discovery but prior to the due date for Motions for Summary Judgment.

12. **Length of Trial:** Counsel estimate the trial will last approximately 3 days total, lasting from 8:30 a.m. to 2:00 p.m. each day, allocated as follows:

2 days for Plaintiff's case  
1 day for Defendant's case  
    days for other parties

13. **Prospects of Settlement:** The status of settlement discussions is: Defendant's counsel has requested a settlement demand from Plaintiff's counsel prior to the scheduling conference.



14. **Electronic Document Filing System:** Counsel acknowledges that Local Rule 5.1 requires that attorneys file and serve all documents electronically, by means of the Court's CM/ECF system, unless the party has been excused from electronic filing on motion for good cause shown. The Court expects all counsel to abide by the requirements of this rule. Pro se parties (litigants representing themselves without the assistance of a lawyer) acknowledge that they must submit their documents to the Clerk on paper, in a form complying with the requirements of the local rules. Counsel opposing a pro se party acknowledges that they must file documents electronically but serve pro se parties with paper documents in the traditional manner.

15. **Other:**

Respectfully Submitted,

**BATEY LAW FIRM, PLLC**

By: /s/ Scott P. Batey  
Scott P. Batey (P54711)  
Attorney for Plaintiff  
30200 Telegraph Rd., Suite 400  
Bingham Farms, MI 48025  
(248) 540-6800; Fax: (248) 540-6814  
[sbatey@bateylaw.com](mailto:sbatey@bateylaw.com)

**SEIBERT AND DLOSKI, PLLC**

By: /s/ Robert J. Seibert  
Robert J. Seibert (P32098)  
Attorneys for Defendant  
19500 Hall Road, Suite 101  
Clinton Township, MI 48038  
(586) 469-3800; Fax: (586) 469-2134  
[rseibert@seibertanddloski.com](mailto:rseibert@seibertanddloski.com)

Dated: March 1, 2019

**CERTIFICATE OF COMPLIANCE AND SERVICE**

I hereby certify that pursuant to the Court's Order and the Local Rules, the parties discussed the contents of this plan and on February 19, 2019, the parties met and conferred and finalized the discovery plan in this matter.

I further certify that I electronically filed the foregoing with the Clerk of Court using the CM/ECF system on March 1, 2019 and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties of operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's CM/ECF system.

I, Scott P. Batey, also certify that this document complies with Local Rule 5.1(a), including: double-spaced (except for quoted materials and footnotes); at least one-inch margins on the top, sides, and bottom; consecutive page numbering; and type size of all text and footnotes that is no smaller than 10-1/2 characters per inch (for non-proportional fonts) or 14 point (for proportional fonts). I also certify that it is the appropriate length. Local Rule 7.1(d)(3).

/s/Scott P. Batey  
Attorney for Plaintiff