

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

NATIONAL RIFLE ASSOCIATION)
OF AMERICA, INC., et al.,)
)
Plaintiffs,)
)
v.) No. 08 C 3696
)
VILLAGE OF OAK PARK, et al.,)
)
Defendants.)

MEMORANDUM ORDER

Oak Park Mayor David Pope ("Pope") has moved for his dismissal as a codefendant in this action brought by National Rifle Association of America, Inc. and two of its members against Pope and the Village of Oak Park itself. Plaintiffs have in turn just filed a document captioned "Response of Non-Opposition to Defendants' Motion To Dismiss Plaintiffs' Claims Against David Pope." This brief memorandum order is issued to dispel a misapprehension on the part of plaintiffs or their counsel or both, as reflected in that Response.

Asserting judicial economy as the basis for non-opposition, plaintiffs say that they "will agree to dismissal of David Pope from these proceedings without prejudice, each party to bear its own costs and fees with respect to said partial dismissal." But of course the terms of dismissal, if legally appropriate, are set by this Court and not by the opposing party. And in this instance Complaint ¶6 (emphasis added) could not be more clear as to the only predicate for naming Pope as a codefendant:

Defendant, David Pope ("Pope"), is the President of the Village of Oak Park, which is his principal place of business. He is being sued in his official capacity.

Nearly a quarter century has elapsed since the seminal and definitive opinion in Kentucky v. Graham, 473 U.S. 159 (1985) taught that no useful purpose is served by the needless inclusion of an individual defendant in a 42 U.S.C. §1983 lawsuit in which the municipality itself is targeted as a defendant. Plaintiffs are represented by experienced counsel who should have known better. Pope's motion is granted--he is dismissed as a defendant with prejudice and without the imposition of any conditions.¹



Milton I. Shadur
Senior United States District Judge

Date: September 19, 2008

¹ In that last respect, this memorandum order expresses no view as to the accuracy or lack of accuracy in the Response's statement that "each party [is] to bear its own costs and fees."