

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

CHERISE MORRIS,)
)
 Plaintiff,)
)
 v.) No. 07 C 3907
)
SGT. SHANE GORDON, et al.,)
)
 Defendants.)

MEMORANDUM ORDER

City of Harvey ("City") and its police Sgt. Shane Gordon ("Gordon") have filed their Answer to the Second Amended Complaint ("SAC") brought against them by Cherise Morris ("Morris"). This memorandum order is issued sua sponte because of the frivolous affirmative defense ("AD") that their counsel have tacked onto their Answer.

Although under no obligation to do so, Morris' counsel has meticulously labeled each of the five counts of the SAC as well as their respective targets: Counts I and II, brought under the auspices of 42 U.S.C. §1983, are asserted only against Gordon and not against City, while Counts III, IV and V, each specifically identified in the SAC as a "state supplemental claim," are advanced against both defendants. Nonetheless defense counsel have advanced a purported AD that begins "To the extent that plaintiffs are asserting a claim against the defendant City of Harvey under 42 U.S.C. §1983, based upon a theory of respondeat superior..."!!

Experienced counsel such as those representing both City and Gordon in this case--and the counsel here are surely that--have no business setting up a fancied but nonexistent straw man and then seeking to knock that phantom down. As stated at the outset, the purported AD is purely frivolous (or in the colorful language of Fed. R. Civ. P. 12(f), "insufficient," "immaterial" and "impertinent"), and it is stricken.



Milton I. Shadur
Senior United States District Judge

Date: February 8, 2008