IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

WILLIAM A. NEWSOM and KHALID HORNE,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 5247-VCS
	)	
	)	
JOSEPH R. BIDEN, III, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

Date Submitted: December 1, 2010
Date Decided: February 28, 2011

William A. Newsom and Khalid Horne, Smyrna, Delaware, *Pro Se Plaintiffs*.

Kevin R. Slattery, Esquire, Deputy Attorney General, Delaware Department of Justice, Wilmington, Delaware, *Attorney for Defendants.*

STRINE, Vice Chancellor.

I. Introduction

This opinion addresses two motions to compel filed by the plaintiffs, William A. Newsom and Khalid Horne, in July and October 2010.

On December 31, 2009, the plaintiffs jointly filed a pro se complaint and motion to proceed in forma pauperis. The plaintiffs' complaint alleges, among other things, that Jessica Barton, a correctional counselor at the James T. Vaughn correctional facility in Smyrna, Delaware, falsified documents and made false statements to a Multi-Disciplinary Team ("MDT") at the Department of Correction (the "DOC"), a DOC body apparently charged with making recommendations regarding commutation of inmate sentences.

Specifically, in Newsom's case, Barton allegedly filed a write-up from a prior incarceration of Newsom but made it appear like it was current to the MDT at a hearing on Newsom's commutation request.[1] Barton also allegedly made intentionally false statements about Newsom's ability to rehabilitate himself in her report to the MDT for the same hearing and then altered the computer recording of the MDT's votes from three to one in favor of commutation, to two in favor of and two against commutation.[2] In retaliation for his filing of grievances with the DOC, Newsom was allegedly intimidated by four of Barton's subordinates. Newsom further alleges that Barton took retaliatory measures against him, including the filing of a false report stating that she felt threatened

[1] Compl. ¶ 3.
[2] Compl. ¶¶ 4, 10.

by him which resulted in Newsom being relocated to a medium security building despite his classification as "minimum status with one classification point."[3]

In Horne's case, Barton allegedly made intentionally false and misleading reports to the Board of Pardons and the Board of Parole, and removed certificates from his treatment folder, and presumably from the record available to the Boards, evidencing the completion of certain programs that Horne claims to have completed.[4] And, as with Newsom, Barton is alleged to have altered the computer recording of the MDT's vote on the commutation of Horne's sentence from two to one against commutation to three to one against commutation.[5] Horne alleges that he sent several letters to the Board of Parole and DOC in which he complained of Barton's conduct.[6] In response, two of the other defendants, DOC employees Kenneth Milbourn and Ricky Porter, showed Horne a new report that Milbourn had allegedly written and resubmitted to the Boards of Pardon and Parole, but no further remedial action has been taken.[7]

Both Newsom and Horne allege that Barton and other employees of the DOC have violated Newsom and Horne's Fourteenth Amendment due process and equal protection rights by allowing the filing of the allegedly false reports with the Boards of Parole and Pardons. Newsom and Horne further allege that as a result of the alleged failure of defendant prison administrators and attorneys at the Department of Justice to investigate Newsom and Horne's accusations of wrongdoing, their Fourteenth and First Amendment

[3] Compl. ¶¶ 15, 18, 24.
[4] Compl. ¶ 30.
[5] *Id*.
[6] Compl. ¶ 31.
[7] Compl. ¶¶ 32, 33, 36.

right to free speech has been violated. Finally, Newsom and Horne allege that the claimed retaliatory measures aimed at them in response to their complaints constitute cruel and unusual punishment under the Eight Amendment. As for relief, Newsom and Horne request a temporary restraining order, or in the alternative, a no contact order, against all the named defendants in order to prevent retaliation in response to the filing of this lawsuit. Each plaintiff also requests monetary damages in the amount of $75,000 per defendant, plus the costs incurred in prosecuting this case.

In a February 3, 2010 opinion, this court granted the plaintiffs' motion to proceed in forma pauperis. In that opinion, this court dismissed Counts IV and VII of the complaint, for deliberate indifference under the First and Fourteenth Amendments with respect to the alleged failure on the part of prison administrators and state attorneys to adequately respond to Newsom and Horne's complaints, but allowed Counts I, II, III, and V (alleged violations of Fourteenth Amendment due process); and Count VI (alleged violation of the Eight Amendment) to proceed.

On April 13, the defendants answered those five remaining counts. Six days later, on April 19, the plaintiffs filed their first discovery request (the "Original Document Request"). On July 12, 2010, after receiving two extensions from the court, the defendants responded to the plaintiffs' Original Document Request. On July 30, not satisfied with the response they received, the plaintiffs filed a motion to compel discovery (the "July Motion to Compel"). That motion to compel sought the production of various prison records and files including, among other things: the prison rules and regulations

applicable to the defendants' conduct; the plaintiffs' files created at the MDT sentence commutation hearings; and the personnel files of the defendants, including Barton.

Over two months later, on October 6, 2010, having received no response from the defendants to their July Motion to Compel, the plaintiffs renewed their efforts to obtain the defendants' personnel files by filing another motion to compel (the "October Motion to Compel").

In addressing these discovery motions, it is crucial to note that the plaintiffs do not simply allege that Barton made negative comments about them to the MDT and Boards of Pardons and Parole. Rather, the complaint alleges that Barton altered records and made intentionally false statements about objectively verifiable facts, facts that may well have been relevant to the plaintiffs' sentence commutations, and facts that are, if they exist, susceptible of proof through the introduction of relevant evidence. At least some of the documents requested by the plaintiffs are relevant to that end.

But before addressing the merits of the two motions to compel, I deal with a procedural issue related to the timeliness of the defendants' response to the October Motion to Compel, and the plaintiffs' motion for default judgment filed on November 24.

II. The Plaintiffs' Motion For Default Judgment Is Denied

Over the course of the ten months since the Original Document Request were filed in this court, the defendants have engaged in a repeated pattern of requesting extensions to discovery deadlines, often just as those deadlines were expiring or have already expired. This court, recognizing that deputies attorney general face large and challenging caseloads, tried to be accommodating by granting the defendants' requests for extensions.

But this court's patience cannot be unlimited, lest unfairness result. In an October 2010 letter, this court set a firm deadline of November 19 for the defendants' responses to both motions to compel, noting the leeway that had been given to the defendants in the past with regard to response time, and warning that "[n]o [further] extensions shall be granted."

On the November 19 deadline, the defendants filed their response to the July Motion to Compel,[8] but failed to respond to the October Motion to Compel until November 22. Because the defendants failed to meet the November 19 deadline, the plaintiffs moved for default judgment on their October Motion to Compel.

Frankly, the deputy attorney general has placed the court in a difficult position. The court is well aware of the very difficult job that deputies attorney general face in trying to manage their large caseloads, but the court is now nonetheless left to figure out what consequences, if any, should result from the deputy attorney general's latest failure to meet what the court expressly told him was a firm and inflexible deadline.

Court of Chancery Rule 55 allows for the entry of a default judgment against a party who has "failed to appear, plead or otherwise defend" against the relief sought by the moving party.[9] But despite the lack of an adequate excuse for the repeated failures to meet deadlines, default judgment would be unduly harsh and not appropriate under the circumstances presented here.

[8] Def. Resp. to July Motion to Compel, C.A. No. 5247-VCS (Trans. ID 34495124) (November 19, 2010).
[9] Ct. Ch. R. 55(b).

The Delaware Supreme Court has made clear that there exists "a policy in favor of resolving cases on their merits and against the use of default judgments."[10] But, the Supreme Court also noted that that policy must be weighed against the competing considerations of "social goals, justice and expediency."[11] To aid in that balancing, the Court identified three factors that should be considered in determining whether the grant of default judgment is appropriate: 1) whether culpable conduct by the defendant led to the default; 2) whether the defendant has a meritorious defense; and 3) whether the plaintiffs will be prejudiced.[12] Although the defendants' conduct in missing the November 19 deadline is culpable in light of their previous dilatory conduct and the fact that the court told them that the November 19 deadline was not subject to extension, the other two factors recognized by our Supreme Court cut in the defendants' favor. As we shall see, the merits of the plaintiffs' October Motion to Compel are not strong in light of the defenses raised by the defendants. Additionally, the plaintiffs will not be prejudiced by allowing for the consideration of the defendants' response, which was filed the next business day after the November 19 deadline.[13] Finally, default judgment is rarely appropriate against the government, and I am hesitant to penalize the defendants for their counsel's delays.[14]

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[10] *Apartment Comtys. Corp. v. Martinelli*, 859 A.2d 67, 69 (Del. 2004) (quoting *Rogers v. Hartford Life & Accident Ins. Co.*, 167 F.3d 933, 936 (5th Cir. 1999)).
[11] *Id.* (quoting *Pelican Prod. Corp. v. Marino*, 893 F.2d 1143, 1146 (10th Cir. 1990)).
[12] *Id.* at 69-70.
[13] November 19, 2010 was a Friday. Thus, November 22, 2010, the day the defendants filed their response, was the next business day, Monday.
[14] *Cf.* CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE & PROCEDURE § 2702 (3d ed. 2008) (noting that although default judgments against the government are permitted, "[a]s a practical matter" courts will typically refuse to enter them).

In light of these considerations, the defendants' response to the October Motion to Compel will be considered on the merits and no default judgment will be entered. For now, the court will consider the public discussion in this decision of this issue to be itself of sufficient consequence to the defendants' counsel. If, however, further deadlines are missed, the court will have no choice but to consider more serious disciplinary action. The court urges counsel not to let it come to that.

III. The Motions To Compel Are Granted In Part And Denied In Part

A. The July Motion To Compel

The July Motion to Compel makes eleven requests for documents that the defendants allegedly improperly failed to produce in their July 12, 2010 response to the plaintiffs' Original Document Request. To address requests for documents of the DOC by incarcerated litigants, it is necessary to outline this state's statutory scheme governing the disclosure of sensitive documents to prisoners. I turn to that task now.

1. The Statutory Framework Governing The Disclosure Of DOC Files, Policies, And Procedures To Prisoners

The statutory framework governing the disclosure of DOC files, procedures, and manuals to inmates is best understood as an interplay among three different, but related, statutes.

At the outset, our state's Freedom of Information Act, codified at 29 *Del. C.* §§ 10001-10006 ("FOIA"), is relevant. FOIA is in essence a codification of this state's policy that "public business be performed in an open and public manner so that our citizens shall have the opportunity to observe the performance of public officials . . .

[and] that citizens have easy access to public records . . . ."[15] But that policy is not absolute. The General Assembly recognized that some information must be kept confidential in order to protect citizens from harm, particularly those citizens who either are employed by, or incarcerated in, our state's prison system. To that end, § 10002(g) of FOIA exempts certain categories of documents from the Act's definition of public records, and therefore FOIA's policy of public availability does not extend to those categories. Relevantly, § 10002(g) exempts from its definition of public records:

> (6) Any records specifically exempted from public disclosure by statute or common law; [and]
> . . .
> (13) Any records in the possession of the Department of Correction where disclosure is sought by an inmate in the Department's custody . . . .[16]

But just because those categories of documents are deemed nonpublic for purposes of FOIA does not necessarily mean that inmates are precluded from any access to them at all. Indeed, 11 *Del. C.* § 4322(a) represents an effort by our General Assembly to balance the need for safety and security in our state's prisons against an offender's ability to obtain information relevant to his incarceration. Section 4322(a) provides in full:

> (a) The presentence report (other than a presentence report prepared for the Superior Court or the Court of Common Pleas), the preparole report, the supervision history and all other case records obtained in the discharge of official duty by any member or employee of the Department shall be privileged and shall not be disclosed directly or indirectly to anyone other than the courts as defined in § 4302 of this title, the Board of Parole, the Board of Pardons, the Attorney General and the Deputies Attorney General or others entitled

[15] 29 *Del. C.* § 10001.
[16] 29 *Del. C.* § 10002(g).

> by this chapter to receive such information; except that the court or Board of Pardons may, in its discretion, permit the inspection of the report or parts thereof by the offender or the offender's attorney or other persons who in the judgment of the court or Board of Pardons have a proper interest therein, whenever the best interest of the State or welfare of a particular defendant or person makes such action desirable or helpful. No person committed to the Department shall have access to any of said records. The presentence reports prepared for the Superior Court and the Court of Common Pleas shall be under the control of those Courts respectively.[17]

But, as the text of § 4322(a) stating that "[n]o person committed to the Department shall have access to any of said records"[18] implies, § 4322(a)'s grant of access is limited, as it applies only to offenders who are not actually incarcerated, and reflects the heightened security concerns raised by disclosure to incarcerated persons. Thus, in *Jenkins v. Gulledge*, our Supreme Court, outside the context of discovery in litigation, said that § 4322(a) is "clear in its mandate that such records may not be disclosed either directly or indirectly to persons in the custody of the Department of Correction."[19]

The third and final statute concerning a prisoner's access to DOC files, manuals, and procedures is 11 *Del. C.* § 6535. That section, before certain changes implemented by our General Assembly in 1998 to be discussed below, mandated that the DOC "promulgate rules and regulations for the maintenance of good order and discipline" and further required that "[a] copy of such rules shall be provided to each inmate."[20] It was

[17] *Id*.
[18] 11 *Del. C.* § 4322(a).
[19] *Jenkins v. Gulledge*, 449 A.2d 207, 208 (Del. 1982).
[20] *See Ross v. Dept. of Correction*, 1996 WL 769271, at *2 (Del. Super. Dec. 9, 1996) (quoting 11 *Del. C.* § 6535) ("*Ross I*").

that language in § 6535, and litigation brought under it, that in 1998 prompted changes to the statutory scheme I have just outlined.

In 1996, two prisoners filed a lawsuit ("*Ross I*") against the DOC seeking, among other relief, a writ of mandamus to enforce their alleged right, under 11 *Del. C.* § 6535, to receive "individualized copies of disciplinary rules and regulations."[21] The Superior Court dismissed the suit, finding that the statutory text in question, 11 *Del. C.* § 6535, did not confer a clear legal right for the plaintiffs to receive individual copies of the disciplinary rules and procedures and that the prison's habitual practice of making the rules available upon request was sufficient.[22]

The Delaware Supreme Court reversed ("*Ross II*") and held that the prisoners had, under 11 *Del. C.* § 6535, "a clear statutory right" to receive copies of the DOC's disciplinary rules, but remanded the case for further proceedings to determine which DOC rules and regulations fell within the scope of § 6535.[23]

On remand ("*Ross III*"), the Superior Court granted the writ of mandamus with regard to the prison's disciplinary rules but found that the plaintiffs had not demonstrated a right to receive the DOC's "operational and administrative regulations."[24] The plaintiffs again appealed to the Delaware Supreme Court. But, in 1998, before the appeal reached our Supreme Court, the Delaware General Assembly, in an apparent response to

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[21] *Ross I*, 1996 WL 769271, at *1.
[22] *Ross I*, 1996 WL 769271, at *2.
[23] *Ross v. Dept. of Correction*, 697 A.2d 377, 377 (Del. 1997) ("*Ross II*").
[24] *Ross v. Dept. of Correction*, 722 A.2d 815, 820-21 (Del. Super. 1998) ("*Ross III*") ("Those rules, regulations, directives, and guidelines intended for [purposes other than controlling inmates' discipline and conduct] are, therefore, not properly included within the purview of § 6535.").

Ross II,[25] amended 11 *Del. C.* § 6535 and added two subsections to 11 *Del. C.* § 4322, 11 *Del. C.* §§ 4322(c) and (d). Sections 4322(c) and (d) provide that:

> (c) No inmate shall be provided a copy of the Department of Correction Policy and Procedures Manuals, The Bureau of Prisons Policy and Procedures Manuals, nor any of the Department of Correction Facilities Operational Procedures, Administrative Regulations and Post Orders.
>
> (d) The Department of Correction Policies and Procedures, including any Policy, Procedure, Post Order, Facility Operational Procedure or Administrative Regulation adopted by a Bureau, facility or department of the Department of Correction shall be confidential, and not subject to disclosure except upon the written authority of the Commissioner.[26]

11 *Del. C.* § 6535 now reads:

> The Department shall promulgate rules and regulations for the maintenance of good order and discipline in the facilities and institutions of the Department, including procedures for dealing with violations. Prisoners of the Department *shall have access to those portions of the disciplinary rules that apply to them, at places and times deemed reasonable and appropriate by the Commissioner.* There shall be a record of charges of infractions by inmates, any punishments imposed and of medical inspections made.[27]

The Delaware Supreme Court in *Ross IV*, on account of those amendments, ruled that the "primary challenges presented by [the prisoners]" — that they had an enforceable right to a copy of certain DOC regulations — "must be dismissed because those claims have been rendered moot by the subsequent amendments [to 11 *Del. C.* §§ 4322 and 6535]."[28]

The most obvious effect of the amendments to 11 *Del. C.* § 4322 and 11 *Del. C.* § 6535 was to mandate a result contrary to the one the Delaware Supreme Court was

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[25] *See, e.g., Jackson v. Danberg*, 2008 WL 1850585, at *4 (Del. Super. Apr. 25, 2008) (noting that §§ 4322(c) and (d) were "apparently" enacted in response to the *Ross II* decision).
[26] 11 *Del. C.* §§ 4322(c)-(d).
[27] 11 *Del. C.* § 6535 (emphasis added).
[28] *Ross v. Dept. of Correction*, 722 A.2d 813, 814 (Del. 1998) ("*Ross IV*").

obligated to reach in *Ross II*. That is, the General Assembly seems to have made a policy decision that prisoners, in the ordinary course of affairs in their incarcerated life, should not have an unqualified right to obtain copies of DOC disciplinary rules or regulations as they enjoyed, at least with respect to prison disciplinary rules, before the 1998 amendments.

The patchwork of statutory provisions just discussed and their application to the July Motion to Compel raises two key issues: 1) the relevance and application of § 4322(a) to the categories of documents requested in the July Motion to Compel; and 2) the application of §§ 4322(c) and (d) to the categories of documents requested in the July Motion to Compel. Unfortunately, neither issue has been well briefed by the parties.

2. Section 4322(a) And Paragraphs One, Two, Three, Four, Seven, And Eight Of The July Motion To Compel

In paragraphs one, two, three, four, seven, and eight, the plaintiffs request:

- Their classification records and treatment and institutional files from the beginning of their incarceration until the time of the response to the July Motion to Compel (paragraphs one and two);

- Any documents that the defendants submitted to the Boards of Pardons and Parole and the Institutional Classification Board concerning the plaintiffs' request for sentence commutation (paragraph three);

- Any documents created at their MDT classification hearings and used as part of the record for the plaintiffs' request for sentence commutation from the time of those hearings until the time of the response to the July Motion to Compel (paragraph four);

- Their case notes from the DOC Automated Computer System ("DACS") concerning their requests for sentence commutation, specifically the votes cast and any votes that were corrected or

> changed from October 8, 2008 until the time of the response to the July Motion to Compel (paragraphs seven and eight).

In other words, in paragraphs one, two, three, four, seven, and eight the plaintiffs request various items from their prison files. These documents are clearly relevant in the Rule 26 sense to the plaintiffs' claims because the information sought either bears directly on, or is reasonably calculated to lead to the discovery of admissible evidence that will bear on,[29] the plaintiffs' allegations that their information was intentionally falsified to the MDT panel conducting the sentence commutation hearings, and that Barton intentionally altered the computer recording of the MDT panel's commutation votes.

But the problem for the plaintiffs is that for all its lack of clarity,[30] § 4322(a) is clear in one respect. That is, to the extent that § 4322(a) permits an offender to receive documents within its ambit, the offender may only obtain such documents after either

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[29] *See* Ct. Ch. R. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.").

[30] These ambiguities would appear to include: 1) whether the provision of § 4322(a) giving the "court or Board of Pardons" the ability to provide "the report" to an "offender" when "the best interest of the State or welfare of a particular defendant or person makes such action desirable or helpful," treats the word "report" as applying to both preparole and presentence reports, as well as to all the other related records referenced in the first sentence of § 4322(a) (i.e., "the supervision history and all other case records obtained in the discharge of official duty by any member or employee of the Department") or just to preparole reports in discovery; and 2) whether an "offender" who is incarcerated is barred from eligibility to receive "the report" because of the sentence reading "No person committed to the Department shall have access to any of said records." 11 *Del. C.* § 4322(a). *But see Jenkins v. Gulledge*, 449 A.2d 207, 208 (Del. 1982) ("[Section 4322(a)] is clear in its mandate that such records may not be disclosed either directly or indirectly to persons in the custody of the Department of Correction.").

"*the court* or Board of Pardons" makes a finding that the offender has a "proper interest therein" and that "the best interest of the State or welfare of a particular defendant or person makes such [provision of documents] desirable or helpful."[31] Unfortunately for the plaintiffs, 11 *Del. C.* § 4302(6), a section to which 11 *Del. C.* § 4322(a) explicitly refers,[32] defines the term "court" as used in Chapter 43 of Title 11 to mean the "Superior Court, Family Court, Court of Common Pleas, or Justices of the Peace Courts."[33] Notably absent is this court, the Court of Chancery.

Because this court is not a court authorized to order or permit disclosure under § 4322(a) in any event, to the extent that Newsom and Horne seek information covered by § 4322(a), they must seek that information under the authority of a court identified in § 4302(6). Of course, because Newsom and Horne are incarcerated and thus "committed to the [DOC]" in the parlance of § 4322(a), even a "court" within the definition of § 4302(6) may be barred from granting them this information.[34] Nonetheless, given that their complaint seeks legal remedies, including monetary damages, and declaratory relief might well be sufficient to ensure that any future proceedings involving the plaintiffs' commutation requests are not tainted by any reoccurrence of proven past misconduct, Newsom and Horne may wish to transfer this action to the Superior Court and obtain a

[31] 11 *Del. C.* § 4322(a) (emphasis added).
[32] *Id*.
[33] 11 *Del. C.* § 4302(6).
[34] *See* 11 *Del. C.* § 4322(a) ("No person committed to the Department shall have access to any of said records."); *Jenkins v. Gulledge*, 449 A.2d 207, 208 (Del. 1982) (("[Section 4322(a)] is clear in its mandate that such records may not be disclosed either directly or indirectly to persons in the custody of the Department of Correction."); *Moody v. Kearney*, 380 F. Supp.2d 393, 398 (D. Del. 2005) (noting that "until [the incarcerated plaintiff] was represented by counsel, he was precluded from accessing any of the medical and correctional records that were relevant . . . .") (citing 11 *Del. C.* § 4322).

ruling by a § 4302(6) "court" on that score.[35] If the plaintiffs choose not to do that, they will have to petition the Board of Pardons for the requested discovery or proceed without it, because this court is not empowered to grant it to them.[36]

3. Sections 4322(c) And (d) And Paragraphs Five And Nine Of The July Motion To Compel

In paragraphs five and nine of the July Motion to Compel, the plaintiffs seek:

- "Any and all policies, procedures, regulations, directives, and documents . . . concerning rules and guidelines that are used by the institution for the purpose of classification procedures, emergency reclassification, and classification of inmates for the Board of Parole and the Board of Pardons."[37] (paragraph five).

- "Any and all policies, procedures, regulations, instructions, notes, memoranda, internal communications, directives, and documents . . . that define how and for what reasons an inmate would be reassigned to higher security housing."[38] (paragraph nine).

Again, these documents are relevant to the plaintiffs' claims in the sense that in order to show that the defendants' conduct violated prison rules or regulations, it is necessary for the plaintiffs to have access to those rules and regulations. The defendants

[35] *See* 10 *Del. C.* § 1902 ("No civil action, suit or other proceeding brought in any court of this State shall be dismissed solely on the ground that such court is without jurisdiction of the subject matter . . . . Such proceeding may be transferred to an appropriate court for hearing and determination . . . .").

[36] To the extent that any of the documents sought by the plaintiffs were previously disclosed to them in the course of the MDT, Board of Parole, or Board of Pardons proceedings, those documents shall be produced by the defendants. That is, if those proceedings have rules that enable prisoners access to certain information, that information should be disclosed because, by that determination, the State has already taken those documents outside the protection of § 4322(a). Likewise, to the extent the Boards of Pardons or Parole have relevant records otherwise not covered by § 4322(a) because they are not a preparole report or DOC case records, those shall be disclosed. Counsel for the defendants shall file an affidavit on or before March 31, 2011 certifying that he has produced such records.

[37] July Motion to Compel ¶ 5.

[38] *Id.* ¶ 9.

object to the requests in paragraphs five and nine on the grounds that §§ 4322(c) and (d) prohibit disclosure of such DOC documents to inmates, even in the context of discovery requested pursuant to a nonfrivolous claim. The documents the plaintiffs seek fall squarely within the coverage of §§ 4322(c) and (d) whose "broad language appears to encompass all policies related to the classification and general administration of prisoners, with the exception of rules pertaining to prisoner discipline."[39]

Therefore, the question raised by the defendants' position is whether the statutory changes spurred by *Ross II*, and discussed above, were intended to act as a complete bar to the discovery of DOC's rules and regulations in litigation or whether those changes were more narrowly targeted simply to repeal the FOIA-like access that prisoners previously enjoyed under the pre-1998 version of 11 *Del. C.* § 6535 as interpreted by our Supreme Court in *Ross II*.[40]

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[39] *Riley v. Taylor*, 1999 WL 41279, at *3 (Del. Super. Jan. 6, 1999) (citing 11 *Del. C.* § 6535).

[40] Following *Ross IV*, the Supreme Court made clear that the General Assembly's enactment of §§ 4322(c) and (d) precluded prisoners from obtaining DOC rules and regulations in order to formulate a claim. That is, the Supreme Court held that §§ 4322(c) and (d) barred an inmate from seeking a copy of the DOC rules *before* litigation so as to plead a viable complaint. *Riley v. Taylor*, 750 A.2d 530, 530 (Del. 2000) (affirming the Superior Court's conclusion that "the DOC had not arbitrarily or capriciously refused to perform a duty owed to Riley because, based on recently-enacted legislation, Riley was not entitled to access any of the documents he requested other than the grievance procedures.").

Although on their face, §§ 4322(c) and (d) can arguably be read either way,[41] the Delaware Supreme Court has recently addressed the question and endorsed the position that "[p]risoners are precluded from reviewing DOC policies and procedures, *regardless of the reason for requesting them*."[42] In *Laub*, a prisoner sought a writ of mandamus "premised on his allegation that DOC personnel violated their own disciplinary and classification rules."[43] In response to the defendants' motion to dismiss, the prisoner in *Laub* filed a document request seeking, among other things, "the DOC regulations and court orders establishing the duties of DOC personnel" on the claimed basis that "he

[41] The immediate impetus for the addition of those subsections was to reverse the FOIA-like access endorsed in *Ross II*, and the way the language is written seems most obviously directed at ensuring that the documents covered by §§ 4322(c) and (d) are not "provided" to inmates. In that sense, reading those sections to deny discovery to an inmate whose complaint has survived a Rule 12(b)(6) motion, or where the defendants have conceded the inmate's right to discovery by answering the complaint and not moving to dismiss at all, would seem to stop short an otherwise nonfrivolous claim. That is, if after a court denies a motion to dismiss or otherwise allows the prisoner's claimed violations of prison procedures to proceed, it seems troubling to then, on the basis of §§ 4322(c) and (d), deny the prisoner access to the very evidence the prisoner would need to prove his allegations of objectively verifiable facts, the truth of which would ground a legal cause of action and entitle the prisoner to relief. It would seem that another sensible reading of §§ 4322(c) and (d) would be one that recognizes that in general, prisoners have no right to obtain copies of the prison rules and regulations as they previously enjoyed under the former version of 11 *Del. C.* § 6535, but would have a right to obtain those documents through discovery necessary to prosecute a nonfrivolous claim.

On the other hand, the General Assembly must be presumed to have been aware of the other parts of § 4322, and in particular § 4322(a), when it amended § 4322 in 1998. In that regard, §§ 4322(c) and (d) are striking in that they do not include a safety valve like the one found in subsection (a). Rather, those sections simply mandate that "no inmate shall be provided a copy" of the documents, and that the documents "shall be confidential, and not subject to disclosure. . . ." 11 *Del. C.* §§ 4322(c)-(d). Putting aside for present purposes the constitutionality of such a provision in application, this would seem to support the conclusion that the General Assembly intended §§ 4322(c) and (d) to act as complete bars to disclosure, even in discovery.

[42] *Laub v. Danberg*, 2009 WL 1152167, *3 (Del. Super. Mar. 4, 2009) (emphasis added).

[43] *Id.*

needed the requested documents to answer the Motion to Dismiss."[44] The defendants objected to the prisoner's document request on the grounds that "11 *Del. C.* § 4322 preclude[d] [the prisoner] from receiving copies of DOC policy and procedure manuals."[45]

In dismissing the prisoner's mandamus claim on the merits,[46] the Superior Court acknowledged the difficulty the prisoner faced in establishing the first of two elements necessary to survive a motion to dismiss — that the petitioner show he has a "clear right which requires the court to compel the performance of a duty"[47]— because the prisoner did not have access to the very rules he alleged were violated by DOC personnel.[48] Nevertheless, the court, *citing 11 Del. C. §4322 (c),*[49] held that because "[p]risoners are precluded from reviewing DOC policies and procedures, *regardless of the reason for requesting them*," no copy of those DOC policies and procedures would be provided to

[44] *Laub*, 2009 WL 1152167, at *2.
[45] *Id.* at *1.
[46] The court in *Laub* addressed the merits of the prisoner's claims despite the fact that the complaint could have been dismissed on the basis of insufficient process. *Id.* at *3 ("Because Petitioner attempted to accomplish service himself without permission of the Court, the court *may* dismiss Petitioner's complaint against all Defendants. *Nevertheless, the Court will address the merits of Defendant's motion to dismiss rather than dismiss solely on the basis of insufficient process.*") (emphasis added).
[47] *Id.* at *2
[48] *Id.* ("Petitioner is unable to indicate which classification rules were allegedly violated by DOC personnel because he does not have access to DOC policies and procedures. Petitioner argues that the DOC's classification rules should be made available for him to review in order to properly state his claim. The Court disagrees.").
[49] Interestingly, the court also cited *Ross v. Dept. of Correction*, 722 A.2d 815, 820-821 (Del. Super. 1998) (i.e., *Ross III*) alongside § 4322(c). I save the discussion of that point for later. What is important for present purposes is that the Superior Court denied the prisoner's discovery request in *Laub* on the basis of § 4322(c).

the prisoner.[50] Because the "[p]etitioner . . . failed to show that he has a clear right which requires the Court to compel the DOC to perform a certain duty," the Superior Court dismissed the complaint.[51]

On appeal, the Supreme Court confirmed that the prisoner had "requested the Superior Court *to order the State to provide him with discovery* in the form of DOC's policy and procedures manual" because he needed them in order to defend against the defendant's motion to dismiss.[52] The Supreme Court then found that the prisoner had not "demonstrated that the DOC arbitrarily failed or refused to perform a duty to which he ha[d] a clear right."[53] Finally, and most critically, the Supreme Court affirmed the judgment of the Superior Court "on the basis of, and *for the reasons set forth*, in the Superior Court's *well-reasoned decision* dated March 4, 2009."[54]

The Supreme Court's affirmance in *Laub* thus seems to make clear that, even in discovery, the DOC's policies and procedures may not be provided to inmates because of § 4322(c), and that ruling controls my decision here, as it must.

Even more recently, the effect of 11 *Del. C.* § 4322 was addressed by the United States Court of Appeals for the Third Circuit and that court reached a conclusion similar to *Laub*. In *Bacon v. Taylor*,[55] the United States Court of Appeals for the Third Circuit considered a prisoner's appeal from an order of the United States District Court for the

[50] *Id*. (emphasis added).
[51] *Id.* at 4.
[52] *Laub v. Danberg*, 979 A.2d 1111, *1 (Del. 2009) (emphasis added).
[53] *Id.* at *2.
[54] *Id*. (emphasis added).
[55] *Bacon v. Taylor*, 392 F.App'x 30 (3d Cir. 2010).

District of Delaware denying his motion to compel the production of prison logbook entries needed to pursue his claim that he was retaliated against for preparing to file a lawsuit.[56] The District Court denied the prisoner's motion to compel based on "relevancy and prohibited disclosure to an inmate."[57] A unanimous panel of the United States Court of Appeals for the Third Circuit affirmed the District Court's denial of the motion to compel.[58] In so ruling, the panel cited to § 4322(c)[59] and held that "there was nothing arbitrary or erroneous about the District Court's discovery order. The [defendants] were prohibited by state law from disclosing the requested information to an incarcerated litigant."[60] That ruling, by a distinguished federal appellate court applying our state's law, tracks *Laub* by treating § 4322(c) as a bar to discovery.[61]

I must admit, however, to harboring some misgivings towards the interpretation adopted by the Superior Court in *Laub*.[62] First and foremost, when so read, the statute

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[56] *Id.* at 33.
[57] *Id*.
[58] *Id.* at 35.
[59] *Id.* at 33 n.2.
[60] *Id.* at 34.
[61] The decision in *Bacon* is confusing, in that the logbooks sought would seem to fall more naturally within the scope of § 4322(a) because the logbook entries that allegedly showed the prisoner's movements from one prison unit to another are more akin to "supervision history and all other case records" covered by § 4322(a) than the DOC's policies and procedures covered by §§ 4322(c) and (d), but the justification for the court's holding was a citation to the more absolute ban of § 4322(c). *Bacon*, 392 F.App'x at 33 n.2. Despite that confusion, what is important is that the United States Court of Appeals for the Third Circuit believed, and held, that § 4322(c) acts as a complete bar to disclosure, even in the realm of discovery. In hearing the music of the overall opinion, rather than focusing on that one note, I read *Bacon* as echoing the holding in *Laub* that §§ 4322(c) and (d) apply even in the context of discovery.
[62] For the proposition that "[p]risoners are precluded from reviewing DOC policies and procedures, regardless of the reason for requesting them," the Superior Court decision in *Laub* cites both 11 *Del. C.* § 4322(c) and *Ross III*, the Superior Court decision on remand

seems to be constitutionally problematic to the extent that it creates a Kafkaesque situation[63] where an inmate has a potentially meritorious constitutional claim but cannot prove it because the statute precludes him from obtaining the necessary information through the normal channels of discovery.[64] Even assuming the ability to use other forms of discovery (such as requests for admissions, interrogatories, or depositions) to obtain

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in the *Ross* line of cases. In making the broad statement that "[p]risoners are precluded from reviewing DOC policies and procedures, *regardless of the reason for requesting them,*" *Laub* cited *Ross III*, a case that did not deal with discovery. *Laub v. Danberg*, 2009 WL 1152167, at *3 (Del. Super. Mar. 4, 2009) (emphasis added). *Ross III* did not make a ruling on a discovery motion, let alone one on the basis of § 4322(c), nor could it have. 11 *Del. C.* § 4322(c) was not even adopted until June 29, 1998, over four months *after Ross III* was decided. 71 Laws 1997 Ch. 324 § 1.

[63] A similar situation admittedly already exists because of 11 *Del. C.* § 4322(a). In the case of *Brooks v. Watson*, a prisoner sought a writ of mandamus to compel prison officials to delete allegedly false information contained in his prison file. *Brooks v. Watson*, 663 A.2d 486, 486 (Del. 1995). In a short memorandum order, the Supreme Court concluded that not only did the prisoner lack a constitutional right to access his prison file, he also lacked any other right of access on account of § 4322(a). *Id.* The court went on to reason that in order to succeed on his mandamus claim, the prisoner would need to "prove that the information [in his prison file] complained of is, in fact, false . . . [and that] [c]ourts 'cannot and will not demand the removal of any data [from a prisoner's file] simply on [that prisoner's] *unsubstantiated assertion of falsity*.'" *Id.* (quoting *Segars v. Alexander*, 1986 WL 4276, at *3 (Del. Apr. 2, 1986)) (emphasis added). Of course, the obvious problem for the prisoner is that it is not clear how he could prove that the information was false if he could not even see it.

[64] Indeed, both the Delaware and United States Supreme Courts have recognized that prisoners must be afforded "meaningful access to the courts" to prosecute their civil rights claims. *Johnson v. State*, 442 A.2d 1362, 1364 (Del. 1982); *see also Wolff v. McDonnell*, 418 U.S. 539, 576 (1974). The United States Supreme Court has held that in order to ensure meaningful access to the courts, prisoners must be given a "reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts." *Bounds v. Smith*, 430 U.S. 817, 825 (1977). To read 11 *Del. C.* §§ 4322(c) and (d) as absolute bars to discovery of relevant evidence sought in the prosecution of nonfrivolous claims alleging serious violations of constitutional rights risks affording prisoners an inadequate opportunity to present claimed violations of those rights. Moreover, courts should avoid reading statutes in ways that create such constitutional infirmities. *See State v. Baker*, 720 A.2d 1139, 1144 (Del. 1998) ("[W]here a possible infringement of a constitutional guarantee exists, the interpreting court should strive to construe the legislative intent so as to avoid unnecessary constitutional infirmities.") (quoting *Richardson v. Wile*, 535 A.2d 1346, 1350 (Del. 1988)).

evidence (methods that are awkward for prison inmates to use effectively), there is no doubt that the information base upon which the case would turn would be less assuring. In this case, for example, it would be difficult to assess the effect of any deliberate falsification or lie (if such were proven) if the plaintiffs are unable to obtain the rules applicable to the hearings that they allege were corrupted by intentional misconduct on the part of the defendants.

More typically, rather than an outright bar to discovery, the approach to addressing sensitive information such as is at issue here would be to have the court apply a more rigorous screening to discovery requests, or to permit the producing party to redact or otherwise withhold information the disclosure of which would be truly threatening to prison security, but to nonetheless require the production of those portions of the requested information that is crucial to the plaintiffs' claims and that does not pose a concrete security concern. Sections 4322(c) and (d), however, have been read in both *Laub*, as well as in *Bacon*, to preclude a court of this state from balancing the relevant concerns in that manner, and I feel constrained by that precedent.

That brings me to a second point, which is that §§ 4322(c) and (d) do not appear to constrain a federal court in any meaningful sense. Although, as cited, federal courts have pointed to § 4322 in justifying the denial of discovery, federal courts exercising federal question jurisdiction apply federal, not state privilege law.[65] As a result, § 4322 may, in

[65] *See, e.g., In re: Sealed Case (Medical Records)*, 381 F.3d 1205, 1211 (D.C. Cir. 2004) ("It is thus clear that when a plaintiff asserts federal claims, federal privilege law governs, but when he asserts state claims, state privilege law applies."); *Hancock v. Hobbs*, 967 F.2d 462, 466 (11th Cir. 1992) ("A claim of privilege in federal court is resolved by federal common law, unless the

practical terms, act only to prevent the courts of this state from providing discovery to inmates, thereby encouraging them to file their federal constitutional claims in the federal courts.[66]

Although I am aware of these difficulties, I am constrained by *Laub*. Upon a careful reading, that case stands for the proposition that §§ 4322(c) and (d) establish a bar to discovery by an inmate of DOC's policies and procedures. It may well be that I would not have interpreted those sections that broadly had I been the first judge to consider their effect, but I am not. To the extent that §§ 4322(c) and (d) should be read more narrowly than *Laub* and *Bacon* suggest, that reading must come in the first instance from our Supreme Court, not this court.[67]

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action is a civil proceeding and the privilege is invoked 'with respect to an element of a claim or defense as to which State law supplies the rule of decision . . . .'") (quoting Fed. R. Evid. 501); CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE & PROCEDURE § 2016 (3d ed. 2008) (noting that federal courts are only required to apply state privilege law when state law provides the rule of decision). This has been recognized by the United States District Court for the District of Delaware in the context of § 4322. *Jordan v. Bellinger*, 2001 WL 125338, at *2 (D. Del. Feb. 2, 2001) (noting that there was no federal privilege protecting the sought after documents and that the federal court was not required to apply the state privilege law, i.e., § 4322).

[66] Federal courts have found ways to embrace the spirit of §§ 4322(c) and (d) yet improvise around their harsh result if applied as a complete ban. *See, e.g., Boyer v. Taylor*, 2009 WL 2338173, at *10 (D. Del. July 30, 2009) (denying a motion to compel filed by prisoner plaintiffs because the request was overbroad and unduly burdensome, but allowing the plaintiffs to make a second document request and ordering that "should a request seek documents that are objectionable only on the grounds that they are protected from disclosure pursuant to 11 *Del. C.* § 4322(d)," those documents must be produced in a redacted or summarized form.). For this reason, Newsom and Horne may wish to dismiss this case without prejudice and take their claims to federal court.

[67] I also note another avenue of possible relief for Newsom and Horne: asking the Boards of Pardons and Parole to inquire into this situation. If the allegations in the complaint are true, both the Board of Pardons and the Board of Parole were presented intentionally false information by a DOC employee. Those boards obviously have a strong interest in ensuring that their important discretionary authority is exercised on the basis of a reliable

4. The Defendants Must Submit Proof That The Documents Sought In Paragraph Six Do Not Exist

In paragraph six, the plaintiffs seek the transcripts of their Board of Parole hearings. In their response to the Original Document Request, the defendants claimed that such transcripts do not exist.[68] In their July Motion to Compel, the plaintiffs insist that "[a]ll parole hearings are recorded and transcribed."[69] In response, the defendants again state that the Board of Parole does not transcribe its hearings. In support of that contention, the defendants argue that the Board of Parole is not covered by the Delaware Administrative Procedures Act and that there is nothing in the Board of Parole's enabling statute that requires the Board to record or transcribe its hearings.[70] But, the defendants did not submit an affidavit from anyone with direct knowledge about the plaintiffs' Board of Parole hearings as to whether those hearings were transcribed or recorded.

Even if the defendants are correct that the Board of Parole is not *required* to transcribe its hearings, that does not satisfactorily answer the question of whether Newsom and Horne's hearings were transcribed or recorded in some other way. In fact, counsel for the defendants has not indicated that he has even asked whether the plaintiffs' hearings were transcribed or recorded. Additionally, just because the hearings were not transcribed does not mean that they were not recorded. It might well be that the plaintiffs' hearings were not transcribed or even recorded, but the defendants' reliance on

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record, and is not tainted by intentional wrongdoing. As noted, it appears Newsom and Horne may have done this already to some extent.

[68] July Motion to Compel at 4.

[69] *Id*.

[70] Def. Resp. to July Motion to Compel, C.A. No. 5247-VCS (Trans. ID 34495124) (November 19, 2010) ¶ 9.

the fact that the hearings are not legally required to be transcribed is insufficient. The defendants, therefore, must actually find out whether a transcription or recording of the plaintiffs' hearings exists and submit an affidavit indicating the results of that inquiry on or before March 31, 2011.

B. The October Motion To Compel And Paragraph Eleven Of The July Motion To Compel Can Be Considered Together And Are Denied

There is overlap between the documents sought in paragraph eleven of the July Motion to Compel and the documents sought in the plaintiffs' October Motion to Compel. Because of this overlap, I will consider these two requests together.

In paragraph eleven of the July Motion to Compel, the plaintiffs seek:

> any documents, grievances, complaint letters, and end results from such documents that have been listed and lodged against the defendants from any inmates, or other staff members of the Department of Corrections or any of its sub-agencies from the date of their employment through and including the date of [the] response to this request.[71]

In the October Motion to Compel, the plaintiffs seek the prison personnel files of all of the defendants. In essence, therefore, paragraph eleven of the July Motion to Compel and the October Motion to Compel seek production of the same documents — any complaints, grievances and other similar documents found in the personnel files of various prison officials.[72] The plaintiffs' motions to compel those documents must be denied for two reasons.

[71] July Motion to Compel ¶ 11.

[72] The defendants argue that the plaintiffs' October Motion to Compel is premature because the plaintiffs never requested the production of the defendants' personnel files in the Original Document Request and are therefore not yet allowed to move to compel their

First, the plaintiffs appear to seek the requested documents under § 552 of Title 5 of the United States Code which deals with what information federal agencies must make public.[73] Clearly, the Delaware DOC, a *state* agency, is not an agency covered by that federal statute. More importantly, even under Delaware's FOIA, personnel files are excluded from the definition of public records.[74]

Second, consistent with the Delaware FOIA, federal courts have held that such disciplinary records contained in a DOC employee's personnel file fall under the scope of § 4322(a). Those courts have also held that such files are not subject to disclosure to an inmate,[75] and when ordering them to be produced, have ordered them produced to the court only for an *in camera* review.[76] Unfortunately for Newsom and Horne, as discussed earlier, this court is not a "court" for purposes of § 4322(a) so even if I were inclined to rule on whether § 4322(a) bars production to an inmate or to order an *in camera*

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production. As a point of law, the defendants' objection is well taken. *See* Ct. Ch. R. 37(a)(2). But more practically, the plaintiffs' October Motion to Compel is better understood as a renewed effort to obtain the grievances, complaint letters and other similar documents that they seek in their July Motion to Compel and that were requested in paragraph 16 of their Original Document Request. To the extent that the plaintiffs seek documents from the defendants' personnel files in their October Motion to Compel that are outside the scope of paragraph 11 of the July Motion to Compel, the October Motion to Compel is premature and those documents must first be requested in accordance with Court of Chancery Rule 34.

[73] 5 U.S.C. § 552.

[74] 29 *Del. C.* § 10002(g)(1).

[75] *See Evans v. Cook*, 2008 WL 4916404, at *2 (D. Del. Nov. 13, 2008) (quashing, on the basis of 11 *Del. C.* § 4322(a), a subpoena for "documentation of the employment history of Defendant" who allegedly used excessive force against a prisoner because the plaintiff, "as an inmate in the custody of the Delaware [DOC], is precluded from obtaining the records he seeks.").

[76] *See Ali v. Kasprenski*, 2009 WL 2948044, at *2 (D. Del. Sept. 14, 2009) (ordering that a DOC internal affairs report be produced under seal for an *in camera* review over an objection that disclosure of the report was prohibited by § 4322).

inspection of the files, which I am not at this stage,[77] § 4322(a) prohibits me from doing so.

IV. The Defendants' Refusal To Answer Horne's Motions To Compel

Newsom and Horne filed their complaint together while they were both housed at the same correctional facility. Since then, the plaintiffs have been separated and are now housed in different facilities. As inmates housed in different facilities, the plaintiffs claim to have no way of communicating with each other and as a result, Horne has not signed any submission to this court other than the complaint. The plaintiffs concede that Horne did not sign the motions to compel addressed in this opinion. Instead, the plaintiffs have attached an "affidavit of authorization" to each motion. That affidavit is signed by Horne and indicates that Newsom is authorized to file papers on Horne's behalf.

In both of their responses to the plaintiffs' motions to compel, the defendants indicated that they were responding only to Newsom's motion to compel and not Horne's because Horne had not signed the motions. Court of Chancery Rule 11 states that if a party does not sign a document, the document shall be stricken from the record.[78]

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[77] These records are of questionable relevance as they seek information relating to complaints about the defendants by others than the plaintiffs. When dealing with sensitive information of this kind, it would be appropriate, even in the absence of § 4322(a), to require that other more central discovery proceed first and, only after that, to consider requiring production and even then only upon a much clearer showing of relevance. Based on the complaint, it is unlikely that the files of anyone other than Barton could be relevant even in the broader discovery sense, and that complaints against Barton by others would themselves be of questionable relevance even in that broader sense. Before requiring production of such sensitive documents, even just to the court, the plaintiffs should make a specific showing of need and a proper purpose.

[78] Ct. Ch. R. 11(a).

Federal courts have been strict in their interpretation of the analogous federal rule and have held that the rule is not satisfied when a non-lawyer signs on behalf of a party.[79] Newsom is not a lawyer and cannot act as Horne's counsel. Horne must sign all the papers filed on his own behalf.

Although I am not unsympathetic to the coordination difficulties Newsom and Horne face, the command of Rule 11 is clear and Newsom and Horne both must sign any filings. At this time, this opinion will formally apply only to Newsom. But, as a party to the case, Horne has presumably received copies of the July and October Motions to Compel and once he has signed and submitted them to the court, this opinion will apply to those motions as well. As a party to this action, Horne must be served with any future filings of any of the parties, and should have been served with all earlier filings.[80] If, for some reason, Horne does not have a copy of the motions to compel, provision must be made by the defendants to remedy that situation, provide Horne with the motions, and allow him to sign them. When Horne does so and submits them to the court, this opinion will be effective as to Horne. In the future, the defendants have a choice: they can make some limited accommodation so that Horne and Newsom can both sign the documents they file in this case; or they will be forced to respond to the duplicative filings that will

[79] CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE & PROCEDURE § 1333 (3d ed. 2008) ("If a party is unrepresented by counsel, Rule 11 requires the party himself or herself to sign the pleading, motion, or other paper before submitting it to the district court. Several federal courts have held that the Rule 11 signature requirement is not satisfied when a nonlawyer signs a paper on behalf of an unrepresented party — the paper either must be signed by the party or by a lawyer.") (internal citations omitted).

[80] *See* Ct. Ch. R. 5(a) (requiring that all parties to an action be served with all court filings and orders in that action).

result from Horne signing the copies of documents served on him and then resubmitting them to the court in addition to the documents filed and served by Newsom.

V. Conclusion

For the foregoing reasons, the plaintiffs' motions to compel are denied in part and granted in part. As to the transcriptions sought in paragraph six of the July Motion to Compel, the defendants shall produce sworn evidence regarding the existence of transcriptions or recordings on or before March 31, 2011. The defendants shall also file the certification required in note 36 of this opinion by the same date. As to the documents sought in paragraphs one, two, three, four, five, seven, eight, nine, and eleven of the July Motion to Compel and the documents sought in the October Motion to Compel, the plaintiffs' motion to compel is DENIED. All future filings in this case must be signed by both Newsom and Horne. IT IS SO ORDERED.