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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Armando R. Aros, III,	)	No. CV-11-2565-PHX-SRB (LOA)
Plaintiff,	)	<b>ORDER</b>
vs.	)	
Charles L. Ryan, et al.,	)	
Defendants.	)	

This matter is before the Court on Plaintiff’s Motion to Reconsider and to Recalibrate the Deadline for Responding to Defendants’ Motion for Protective Order. (Doc. 143) Pursuant to the Rule of Practice (“Local Rule” or “LRCiv”) 7.2(g)(2), the Court ordered Defendants to respond no later than February 21, 2014, which they did. (Docs. 175, 180)

In the order for which Plaintiff seeks reconsideration, the Court granted Defendants’ Motion for Protective Order. (Doc. 140) Defendants sought a protective order with respect to Plaintiff’s request for production of his “psychiatric file” from 1999 to the present. They explained that the Arizona Department of Corrections’ (“ADOC”) Department Order 1104 governs an inmate’s access to his own mental health records and requires a determination by a mental health professional whether such review by an inmate would be detrimental to the inmate’s condition or treatment. Defendants provided the Court with a copy of the policy, entitled Inmate Medical Records. (Doc. 111, Exhibit A) Under the section entitled Inmate Requests to Review their Medical Record, when an inmate requests to review his mental health records, the medical records staff must first forward the mental health records to a psychiatrist

1 or licensed psychologist to determine if the inmate's review would be detrimental to his  
2 condition or treatment. (*Id.*) Defendants argued Plaintiff should be required to comply with the  
3 policy before they should have to disclose his mental health records, and he had not done so.

4 Plaintiff did not file a response to Defendants' Motion for Protective Order. Based on  
5 Plaintiff's failure to respond, the Court granted the Motion.

6 Plaintiff contends in the motion for reconsideration he never received a copy of  
7 Defendants' Motion for Protective Order, which is why he did not respond. Plaintiff claims  
8 other filings he submitted to the Court reflect the importance of his mental health records.  
9 Plaintiff argues that because the records are so important to his case, he would have responded  
10 to the Motion for Protective Order if he had received it. Plaintiff asks the Court to rescind its  
11 prior Order granting the protective order, direct the Clerk of Court to send him a copy of  
12 Defendants' Motion for Protective Order, and re-set the deadline for him to respond to the  
13 Motion.

14 Defendants argue in their response to the motion for reconsideration that proof of mailing  
15 creates a rebuttable presumption of receipt and Plaintiff has not rebutted the presumption. (Doc.  
16 180) Defendants contend they mailed Plaintiff a copy of the Motion for Protective Order on  
17 September 25, 2013, the day it was filed, along with several responses to discovery requests and  
18 a Notice of Errata regarding an exhibit that was mistakenly omitted from the Motion for  
19 Protective Order. Additionally, Defendants point out that electronic filing notices of the Motion  
20 and the Notice of Errata were sent to Plaintiff's housing unit. Lastly, Defendants argue Plaintiff  
21 has not availed himself of the ADOC policy to get his mental health records.

22 Motions for reconsideration are governed by LRCiv 7.2(g)(1), which provides:

23 The Court will ordinarily deny a motion for reconsideration of an Order absent  
24 a showing of manifest error or a showing of new facts or legal authority that  
25 could not have been brought to its attention earlier with reasonable diligence.  
26 Any such motion shall point out with specificity the matters that the movant  
27 believes were overlooked or misapprehended by the Court, any new matters being  
28 brought to the Court's attention for the first time and the reasons they were not  
presented earlier, and any specific modifications being sought in the Court's  
Order. No motion for reconsideration of an Order may repeat any oral or written  
argument made by the movant in support of or in opposition to the motion that  
resulted in the Order. Failure to comply with this subsection may be grounds for  
denial of the motion.

1 Motions for reconsideration should be granted only in rare circumstances. *Defenders of*  
2 *Wildlife v. Browner*, 909 F. Supp. 1342, 1351 (D. Ariz. 1995). “Reconsideration is appropriate  
3 if the district court (1) is presented with newly discovered evidence, (2) committed clear error  
4 or the initial decision was manifestly unjust, or (3) if there is an intervening change in  
5 controlling law.” *School Dist. No. 1J, Multnomah County v. ACandS, Inc.*, 5 F.3d 1255, 1263  
6 (9th Cir. 1993). “The purpose of a motion for reconsideration is to correct manifest errors of  
7 law or fact or to present newly discovered evidence.” *Harsco Corp. v. Zlotnicki*, 779 F.2d 906,  
8 909 (3d Cir.1985), *cert. denied*, 476 U.S. 1171 (1986). Such motions should not be used for the  
9 purpose of asking a court “to rethink what the court had already thought through - rightly or  
10 wrongly.” *Defenders of Wildlife*, 909 F.Supp. at 1351 (quoting *Above the Belt, Inc. v. Mel*  
11 *Bohannon Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983)).

12 The Court finds Defendants’ arguments regarding Plaintiff’s likely receipt of the Motion  
13 for Protective Order compelling. They attach copies of the metered and dated envelope that  
14 contained the Motion and discovery responses. (Doc. 180 at 4) Plaintiff subsequently  
15 acknowledged receipt of that envelope when, on October 9, 2013, he sent a letter to Defendants’  
16 counsel regarding the discovery responses that were in the envelope with the Motion. (*Id.*)  
17 Additionally, in a responsive letter to Plaintiff dated October 22, 2013, counsel specifically  
18 referred to the “Motion for Protective Order” and even identified the docket number. (Doc. 180,  
19 Exh. E) Despite the clear reference to the Motion in the letter, Plaintiff did not contact counsel  
20 to inform him he did not receive it. Rather, Plaintiff claims he did not learn about the Motion  
21 until the Court issued the ruling on November 18, 2013 granting the Motion. (Doc. 143 at 2)

22 Despite Plaintiff’s claim he never received the Motion, the evidence strongly supports  
23 Defendants’ contention that Plaintiff received the Motion when it was sent to him by mail on  
24 September 25, 2013. Regardless, that issue need not be decided here for purposes of the motion  
25 for reconsideration.

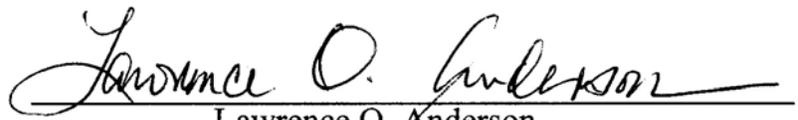
26 Plaintiff does not assert in the motion for reconsideration, or in any other submission to  
27 the Court, that he followed the procedure set forth in ADOC Department Order 1104. That  
28 policy allows an inmate to access to his own mental health records once a determination is made

1 by a mental health professional that such review would be detrimental to the inmate's condition  
2 or treatment. Because Plaintiff may very well be able to access his mental health records  
3 without Court involvement, the Court finds no basis at this time to reconsider its ruling granting  
4 the Motion for Protective Order. In the event Plaintiff's request to obtain the records through  
5 the procedure set forth in Department Order 1104 is unsuccessful, he may then request the  
6 Court's assistance, provided, of course, this discovery is relevant to the claims or defenses  
7 raised in this action, upon a showing of good cause, or is not inconsistent with other limitations  
8 on discovery. *See* Rule 26(b)(1)-(2), Fed.R.Civ.P. For these reasons, Plaintiff's request for  
9 reconsideration will be denied.

10 Accordingly,

11 **IT IS ORDERED** that Plaintiff's Motion to Reconsider and to Recalibrate the Deadline  
12 for Responding to Defendants' Motion for Protective Order, doc. 143, is **DENIED**.

13 DATED this 11<sup>th</sup> day of March, 2014.

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16 Lawrence O. Anderson  
United States Magistrate Judge