

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARK WHITE,

Plaintiff,

vs.

CIVIL ACTION NO. 13-15073

DISTRICT JUDGE AVERN COHN

MAGISTRATE JUDGE MONA K. MAJZOUB

ROSILYN JINDAL, et al.,

Defendants.

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**ORDER RESERVING RULING ON PLAINTIFF'S COUNSEL'S MOTION FOR  
WITHDRAW [126] AND PLAINTIFF'S MOTION TO RE-FILE MOTION TO AMEND  
COMPLAINT AND RESPONSE TO COUNSEL'S MOTION TO WITHDRAW [128]  
AND FOR IN CAMERA REVIEW OF DISCOVERY DOCUMENTS**

**I. Background**

Plaintiff Mark White, currently a prisoner at the Lakeland Correctional Facility, in Coldwater, Michigan, filed this action under 42 U.S.C. § 1983 against Defendants Roslyn Jindal (a Physician's Assistant), Corizon Health Incorporated (Corizon) (formerly known as Correctional Medical Services (CMS)) (health-care contractors that provide services to the Michigan Department of Corrections (MDOC)), Paul Klee (the Warden of the Gus Harrison Facility), and Dr. William Nelson (a former MDOC physician). (Docket no. 1 at 1-2.) In his Complaint, Plaintiff alleges that Defendants Jindal, Nelson, Corizon, and CMS violated his Eighth Amendment rights when they were deliberately indifferent to his serious medical needs. (*Id.* at 4.) Plaintiff alleges that Defendant Klee violated his rights under the First, Fifth, Eighth, and Fourteenth Amendments when he "placed plaintiff in grave personal danger of death or physical

injury in violation of MDOC policy.” (*Id.*) Through his Complaint, Plaintiff seeks “punitive, compensatory & declaratory damages in excess of [\$25,000] on the deliberate indifferent (sic) claims” and “immediate injunctive treatment & transfer to prevent death or physical injury.” (*Id.*)

On February 11, 2014, Plaintiff filed his Amended Complaint and added four additional defendants to this matter: (1) Thomas G. Finco (Deputy Director of the MDOC); (2) Bill Collier (the lead psychiatrist at the Gus Harrison facility); (3) Lee McRoberts (the Deputy Warden at the Gus Harrison facility); and (4) C. Condon (a Resident Unit Manager at the Gus Harrison facility). (*See* docket no. 14 at 1.) Plaintiff also adds two additional claims for violations of the Americans with Disabilities Act, 21 U.S.C. § 12101, and for violations of Michigan’s Handicap Civil Rights Laws, M.C.L. 37.1103.<sup>1</sup> (*Id.* at 2.)

On March 25, 2014, the undersigned reviewed Plaintiff’s Motion for Immediate Temporary Injunction and recommended that the Court grant Plaintiff’s Motion because Plaintiff had shown a “specific, immediate, and substantial threat to [his] safety” and because Defendants had failed to provide any evidence to the contrary. (Docket no. 31.) On April 22, 2014, the Court adopted the undersigned’s Report and Recommendation and ordered that “Defendants shall transfer plaintiff to an MDOC facility that does not have a ‘high concentration’ of members of the Gangster’s Disciples prison gang.” (Docket no. 44.)

Instead of transferring Plaintiff as the Court ordered, Defendants placed Plaintiff in segregation and filed a Motion for Reconsideration. (Docket no. 47.) Defendant Klee also filed a Motion for Summary Judgment, and Defendants Corizon and Nelson filed a Motion to Dismiss.

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<sup>1</sup> The undersigned will refer to Defendants Jindal, Corizon, CMS, Nelson, Finco, and Collier as the “Medical Defendants” and Defendants Klee, McRoberts, and Condon as the “MDOC Defendants.”

(Docket nos. 22 and 27.) On June 24, 2014, the Court dismissed Plaintiff's claims against CMS and Nelson because they were barred by the applicable statute of limitations and dismissed Plaintiff's claims against the remaining Medical Defendants without prejudice for improper joinder. (Docket no. 73.) Thus, Plaintiff's remaining claims are limited to his claims against the MDOC Defendants.

On January 14, 2015, the Court granted Plaintiff's Motion for Appointment of Counsel, noting that while Plaintiff had proceeded in this matter without counsel thus far, the nature of his discovery requests raised security concerns such that certain documents would need to be produced for attorney's eyes only, necessitating the appointment of counsel. (Docket no. 97.) The Court also granted Defendants' Motion to Take Plaintiff's Deposition but required that Defendants wait to do so until Plaintiff's counsel is appointed. (*Id.*)

On August 13, 2015, while Plaintiff was still waiting for the appointment of counsel, the Court addressed several outstanding motions, many of which dealt with the outstanding discovery and counsel-appointment issues in this matter. (Docket no. 119.) Most notably, the Court reiterated its acknowledgement that the "necessity for protecting the sensitive nature of the documents requested by Plaintiff has not subsided [and that a]llowing Plaintiff to review the personal files of other prisoners (even with the Court's supervision) raises security concerns." (*Id.* at 6.) The Court noted that "Defendants . . . have compiled the requested documents, and they will produce them to Plaintiff's attorney when one is appointed;" that the Court would "continue to seek an attorney to represent Plaintiff in this matter;" and that "[i]f the Court is unable to find counsel for Plaintiff, the Court will consider alternative means for proceeding with discovery." (*Id.* at 6-7.)

After nearly 10 months, on September 30, 2015, the Court secured counsel for Plaintiff. (Docket no. 121.) On January 19, 2016, and again on February 4, 2016, the Court held status conferences with counsel regarding this matter. (See docket nos. 123 and 124.) By February 4, 2016, however, Plaintiff’s pro bono counsel indicated that the attorney–client relationship had broken down and that counsel intended to file a Motion to Withdraw. Pending before the Court are Counsel’s Motion to Withdraw (docket no. 126) and Plaintiff’s Motion to Re-file Motion to Amend Complaint and Response to Counsel’s Motion to Withdraw (docket no. 128). Counsel filed a Reply to Plaintiff’s Response. (Docket no. 129.)

Plaintiff’s counsel seeks to withdraw under E.D. Mich. Local Rule 83.25 and Michigan Rules of Professional Conduct 1.16(3) and (6). (Docket no. 126 at 7.)

[A] lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

. . . .  
(3) the client insists upon pursuing an objective that the lawyer considers repugnant or imprudent; [or]

. . . .  
(6) other good cause for withdrawal exists.

Mich. R. Prof’l Conduct 1.16(b). Notably, “When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.” *Id.* at 1.16(c). Likewise, E.D. Mich. Local Rule 83.25 implies that withdrawal of an attorney’s appearance is acceptable only through court order. E.D. Mich. L.R. 83.25(b)(1)(B).

In this matter, counsel contends that there has been “a fundamental breakdown in the attorney-client relationship caused by [Plaintiff’s] belligerent insistence upon taking action that

[counsel] believes to be legally unjustified.” (Docket no. 126 at 8.) Counsel notes that Plaintiff’s “tone and attitude has become increasingly hostile” and that he “no longer accept[s] the advice of counsel.” (*Id.*) Most notably, Plaintiff has “asserted that [counsel’s] advice constitutes ‘collaboration’ with the Assistant Attorney General, and he has told [counsel] that he intends to file a motion to amend his complaint without further consulting her.” (*Id.* at 9.)

On February 23, 2016, Plaintiff filed his Motion to Re-file Motion to Amend Complaint and Response to 126 Motion to Compel. (Docket no. 128.) As the title of his filing suggests, Plaintiff asks the Court for permission to re-file his Motion to Amend, and he responds to his counsel’s request for withdrawal. To the extent Plaintiff’s Motion seeks a Court order allowing a motion to compel, the Court will not entertain his request because he is still represented by counsel in this matter.<sup>2</sup> With regard to the issue of counsel, though, Plaintiff acknowledges a breakdown in communication to the extent that he believes “counsel was corroborating with [defense counsel] to dismiss the case expeditiously” and that counsel has “failed to advise Plaintiff on the progress of the case.” (Docket no. 128 at 2.) Plaintiff, however, states that he “is willing to work with counsel if: (a) counsel will inform Plaintiff of all court rulings, and (b) follow Plaintiff’s requests that do not violate ethics, or (c) simply allow Plaintiff to prepare all pleadings, subject to approval and assist with discovery.” (*Id.* at 3.)

Thus, the Court is left in a quandary regarding the withdrawal of counsel. On one hand,

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<sup>2</sup> **Error! Main Document Only.** “Although criminal defendants possess a constitutional right to be heard and to defend themselves,” an individual “has no right to hybrid representation, that is, a right ‘to be heard both in person and by attorney.’” *Moniz v. McKee*, No. 05-71699, at \*9, (E.D. Mich. Sept. 25, 2007) (Battani, J.) (citing *Crane v. Kentucky*, 476 U.S. 683 (1986); *McKaskle v. Wiggins*, 465 U.S. 168, 183 (1984)) (quoting *United States v. Foster*, 9 F.R.D. 367, 372 (S.D.N.Y. 1949)); *see also* 28 U.S.C. § 1654 (“In all courts of the United States the parties may plead and conduct their own cases personally *or* by counsel.”) (emphasis added); *Brasier v. Jeary*, 256 F.2d 474 (8th Cir. 1958), cert denied 358 U.S. 867, reh’g denied 358 U.S. 923.

the Court acknowledges that counsel volunteered to take this matter on *pro bono* and that it may be imprudent to deny counsel's motion where Plaintiff insists that counsel proceed in a manner that counsel finds ethically questionable. On the other hand, the Court granted Plaintiff's Motion to Appoint Counsel for the specific purpose of assisting Plaintiff with discovery where certain documents were to be turned over to Plaintiff's counsel for attorney's-eyes-only review. Moreover, Plaintiff has indicated a willingness to work with counsel moving forward.

In light of counsel's concerns, Plaintiff's position, the nature of the discovery to be turned over, and the current procedural posture of this case, the Court will reserve ruling on counsel's Motion at this time. Instead, the Court will order Defendant to turn over to the Court any discoverable materials set forth under subsections (b) and (c) of the Court's January 14, 2015 Order, namely:

- b. . . . any documents in their possession, custody, or control regarding assaults or assaultive behavior by Mr. Ridley while he was in prison from January 1, 2013, through January 31, 2014, . . . [and]
- c. . . . any documents in their possession, custody, or control that relate specifically to (1) Mr. Hill's alleged use or attempted use of a knife to attack Plaintiff or (2) Mr. Little's alleged assault . . . .

(Docket no. 97 at 16.) Upon receipt, the Court will inspect these documents and take whatever action it deems necessary to allow this matter to proceed, at which time the Court will also rule on counsel's outstanding Motion to Withdraw. In the interim, the Court recommends that Plaintiff and Plaintiff's counsel attempt to reconcile their differences. Although Plaintiff may proceed in this matter without counsel if he so chooses, or if he is unable to work with counsel that has been provided for him, Plaintiff is advised to consider counsel's advice as a learned representative

advocating on his behalf.<sup>3</sup> If Plaintiff and counsel are able to reconcile their differences before the Court reviews the documents provided by Defendant, they are invited to withdraw their pending Motion.

**IT IS THEREFORE ORDERED** that Defendant must produce for in camera review the documents set forth in this Order. Such production must take place within 21 days.

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of fourteen days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. 636(b)(1).

Dated: March 11, 2016

s/ Mona K. Majzoub  
MONA K. MAJZOUB  
UNITED STATES MAGISTRATE JUDGE

#### **PROOF OF SERVICE**

I hereby certify that a copy of this Report and Recommendation was served on counsel of record and on Plaintiff Mark White on this date.

Dated: March 11, 2016

s/ Lisa C. Bartlett  
Case Manager

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<sup>3</sup> As discussed, Plaintiff indicates a willingness to work with his attorney on certain conditions, i.e., that counsel communicate with him regarding court rulings and that counsel follow Plaintiff's requests that do not violate ethics. Counsel is, of course, expected to communicate with her client, but such communication need only be reasonable. *See* Mich. R. Prof'l Conduct 1.4(a). That is, while Plaintiff may want to be kept completely up to date on this matter, counsel need not provide Plaintiff with immediate details regarding scheduling orders or status conferences. Plaintiff is also cautioned to take note of Michigan Rule of Professional Conduct 3.3, which prohibits an attorney from "mak[ing] a false statement of material fact or law" to the Court. Mich. R. Prof'l. Conduct 3.3(a)(1). If counsel believes that Plaintiff's "request" requires advocating a position contrary to law, such a request would violate counsel's ethical obligations. *See also* Mich. R. Prof'l. Conduct 3.1 ("A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous.").