

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARK WHITE,

Plaintiff,

CIVIL ACTION NO. 13-15073

vs.

DISTRICT JUDGE AVERN COHN

MAGISTRATE JUDGE MONA K. MAJZOUB

ROSILYN JINDAL, et al.,

Defendants.

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**ORDER GRANTING PLAINTIFF'S COUNSEL'S MOTION FOR WITHDRAW [126],  
DENYING PLAINTIFF'S MOTION TO RE-FILE MOTION TO AMEND COMPLAINT  
AND RESPONSE TO COUNSEL'S MOTION TO WITHDRAW [128] AND TAKING  
JUDICIAL NOTICE OF EVIDENCE PRESENTED FOR IN CAMERA REVIEW**

**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.

On March 3, 2016, the Court took Plaintiff's counsel's motion under advisement and ordered that Defendants provide the attorney's-eyes-only documents to the Court for in camera review. Defendants submitted the documents to the Court on March 17, 2016. Included with the documents was the affidavit of the Litigation Coordinator/Administrative Assistant at the Gus Harrison Correctional Facility, which attests to the accuracy and completeness of Defendant's production pursuant to the Court's Order. Having reviewed the documents and the affidavit, the Court will rule on Plaintiff's Counsel's Motion to Dismiss and will take judicial notice of certain facts as discussed further herein.

## **II. Analysis**

### **A. Judicial Notice of In Camera Evidence**

Through his initial discovery requests and his Motion to Compel, in relevant part, Plaintiff sought discovery of the following:

REQUEST NO. 3: ANY AND ALL misconduct reports of assault or assaultive behavior by inmate Terry Ridley #186123 during inmate Ridley's corrections history. Including, mental health history & statements and misconduct findings of the assault on Unit #2 C/O Clark on 1/16/14 while Mr. Ridley resided in #2-150-A;

REQUEST NO. 4: ANY AND ALL misconduct history of assaults, assaultive behavior, possession of weapons by inmate T. Hill #741429, including all misconduct reports and statements by staff from the misconduct in January 2014 while residing in Unit #2 Adrian Facility No. 150-A;

REQUEST NO. 5: ANY AND ALL misconduct assaults, assaultive misconducts and history of mental health of inmate Michael Little #262146, including any Special Threat Group (STG) classification, present or past;

Noting that Plaintiff sought this information to bolster his claims that Defendants used these three prisoners as instruments of retaliation due to their alleged predisposition for violent behavior, the Court ordered Defendant to produce the following for in camera review:

. . . 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]

. . . 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 on Plaintiff.

(Docket no. 97 at 16-17.) In response to this Order, and the Court's subsequent Order to provide the same for in-camera review, Defendant provided two documents related to Mr. Ridley and a statement by the Litigation Coordinator that no such documents exist regarding Mr. Hill or Mr. Little. Having reviewed the documents related to Mr. Ridley, the Court finds that the documents need not be provided to Plaintiff because the Court can alleviate any security concerns by taking judicial notice of the relevant facts contained in the documents.

Federal Rule of Evidence 201 allows the Court to "judicially notice a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). Here, the Court takes judicial notice that:

- Mr. Ridley was found guilty of Threatening Behavior pursuant to MDOC Policy Directive 03.03.105 on November 11, 2013 where he blocked an MDOC Officer from leaving the prison tool room and raised his voice demanding that the officer return his prisoner ID; and

- Mr. Ridley was found guilty of Assault and Battery of a prison staff member on January 16, 2014, where he struck an MDOC staff member with a closed fist two times.

The Court notes that while it takes judicial notice of these facts for purposes of resolving Plaintiff's Motion to Compel and the outstanding discovery issues in this matter, the Court makes no ruling regarding the admissibility of the same.

**B. Plaintiff's Counsel's Motion to Withdraw [126]**

As noted in the Court's March 11, 2016 Order, 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, "[w]hen 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. 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.)

Acknowledging the divergent interests between resolving the discovery issues in this matter and counsel's ethical concerns, the Court reserved ruling on counsel's motion and ordered in-camera review of the at-issue documents. Having reviewed the documents and taken judicial notice of the relevant facts therein, the Court finds no reason to deny Plaintiff's counsel's Motion in light of the ethical issues at hand. Therefore, the Court will grant Plaintiff's counsel's Motion to withdraw.

**C. Plaintiff's Motion to re-file Motion to Amend Complaint [128]**

As part of his response to his counsel's Motion to Withdraw, Plaintiff asked that he be

allowed to re-file his Motion to Amend Complaint. Plaintiff's request is improper in its current form because it is combined with his response regarding his attorney's motion and because he was represented by counsel at the time that he filed the motion.<sup>2</sup> Therefore, the Court will deny his motion. Nevertheless, nothing in this order prevents Plaintiff from filing a Motion to Amend if he chooses to do so following his counsel's withdrawal.

**IT IS THEREFORE ORDERED** that

- a. The Court takes judicial notice of the facts described herein;
- b. Plaintiff's Counsel's Motion to Withdraw [126] is GRANTED; and
- c. Plaintiff's Motion to re-file Motion to Amend Complaint and response to 126 [128] is DENIED.

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: April 1, 2016

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

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<sup>2</sup> “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.



**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: April 1, 2016

s/ Lisa C. Bartlett  
Case Manager