UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARK WHITE,

Plaintiffs,

vs.

ROSLYN JINDAL, CORIZON HEALTH INCORPORATED, PAUL KLEE, WILLIAM NELSON, and CORRECTIONAL MEDICAL SERVICES,

Defendants.
_____/

CIVIL ACTION NO. 13-CV-15073

DISTRICT JUDGE AVERN COHN

MAGISTRATE JUDGE MONA K. MAJZOUB

OPINION AND ORDER GRANTING PLAINTIFF'S MOTION FOR APPOINTMENT OF COUNSEL [66], DENYING PLAINTIFF'S MOTIONS FOR DISCOVERY [86 AND 88], GRANTING DEFENDANTS' MOTION TO TAKE PLAINTIFF'S DEPOSITION [87], AND GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO COMPEL [92]

Plaintiff Mark White, currently a prisoner at the Gus Harrison Correctional Facility in Adrian, 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 added 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.[1] (*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

[1]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."

Motion for Summary Judgment, and Defendants Corizon and Nelson filed a Motion to Dismiss. (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.

Before the Court are Plaintiff's Motion to Appoint Counsel (filed before the Court dismissed the Medical Defendants) (docket no. 66), Plaintiff's Motions for Discovery (docket nos. 86 and 88), Defendants' Motion to Take Plaintiff's Deposition (docket no. 87), and Plaintiff's Motion to Compel Discovery (docket no. 92).[2] The parties each filed responses to the various motions. (Docket nos. 71, 76, 90, 91, and 93.) All pretrial matters have been referred to the undersigned for consideration. (Docket no. 12.) The undersigned has reviewed the pleadings and dispenses with a hearing pursuant to E.D. Mich. L.R. 7.1(f)(2). The Motions are ready for ruling.

I. Facts and Procedural History

Plaintiff alleges that in October 2013, he was elected to the Warden's Forum. (Docket no. 14.) In this position, Plaintiff was to bring housing complaints to his unit manager and Defendant Klee. (*Id.*) Plaintiff alleges that due to an "explosion of thefts & fights due to gang activity" in November 2013, Plaintiff was asked by his assistant unit managers, King and Donaghy, to provide anonymous information regarding the gang activity. (*Id.*) Plaintiff "felt pressured and threatened," because one gang, the Gangsters Disciples, "has been known to stab inmates for merely saying their names out loud." (*Id.*) Nevertheless, Plaintiff refused to provide any information. (*Id.*) Plaintiff

[2]Also pending before the Court are Plaintiff's Motion for Summary Judgment (docket no. 82) and Plaintiff's Motion for Judgment (docket no. 94), both of which will be addressed in a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B).

further alleges that on November 21, 2013, he met with Klee, Defendant McRoberts, and Defendant Condon. (*Id.*) During this meeting, Plaintiff "was outspoken in his belief that administrations (sic) threats to penalize the entire population for gang activity was wrong;" he also voiced concerns over library-access times. (*Id.*) Plaintiff contends that after this meeting, Klee also asked him to provide anonymous information related to the gangs. (*Id.*) Plaintiff states that he again felt pressured and threatened, but he still refused. (*Id.*)

Plaintiff asserts that on November 22, 2013, King and Donaghy took all of his property and issued him two "major misconducts" in retaliation for his refusal to cooperate. (*Id.* at 6.) Moreover, Plaintiff claims that on December 3, 2013, Condon presided over a hearing related to Plaintiff's misconduct and "within hearing range of numerous inmates . . . read a misconduct written by Donaghy . . . [which] contained the words "informant & gangsters disciples." (*Id.*) Plaintiff alleges that Condon "made sure [he] could be overhead by inmates and that he now fears for his life after being called a snitch. (*Id.*; *see also* docket no. 1 at 4.)

Plaintiff also alleges that on December 4, 2013, the day after his hearing, Condon had Plaintiff moved to a new unit that has "numerous gangsters disciples" and that on December 8, 2013, Plaintiff was assaulted by two members of the Gangsters Disciples and threatened with future beatings;[3] they specifically noted that "if any members were transfered (sic) or received misconducts, plaintiff would be stabbed or killed." (*Id.* at 6; docket no. 10 at 5; *see also* docket no.

[3]Plaintiff does not describe the nature of this "assault," but he provided two health-care reports in support of his statement. (Docket no. 10 at 41-42.) In a meeting with his mental health provider, Plaintiff indicated that he was struck in the forehead and that if he did not provide protection money, he would "again be assaulted, and this time much worse." (*Id.* at 41.) His physical health report indicates that he was struck above the left eye, "possibly with an object," causing a "superficial abrasion above [his] left brow." (*Id.* at 42.)

20 at 1.) Plaintiff also alleges that these individuals gave him 60 days to provide a phone number and address where someone outside the prison could pick up cash for "protection money." (*Id.*) Plaintiff asserts that he requested protection from McRoberts, but on December 20, 2013, McRoberts "called plaintiff to the Officers station and in front of other inmates and with [Condon] present called plaintiff a liar over the entire incident, denied any move or protection, and then threatened plaintiff [by saying], 'This is the last I want to hear of this matter.'" (*Id.*) Plaintiff, therefore, claims that Klee, McRoberts, and Condon "conspired to punish plaintiff for exercise of his [First Amendment right to] free speech . . . and are refusing to provide proper protection in violation of [the Eighth Amendment]." (*Id.* at 7.)

I. Plaintiff's Motions for Discovery [86 and 88]

Plaintiff's Motions for Discovery asks the Court to order Defendants to produce various documents for inspection and copying under Fed. R. Civ. P. 34. (Docket nos. 86 and 88.) Such requests, however, are improper. While Plaintiff may file a Motion to Compel responses to discovery under Fed. R. Civ. P. 37 if Defendants fail to properly respond, he must first serve Defendants with such discovery requests as provided in Fed. R. Civ. P. 26, 33, and 34. That is, Plaintiffs' discovery requests must first be directed to Defendants, not filed with the Court. Plaintiff's Motions will be denied.

II. Plaintiff's Motion to Compel [92]

While Plaintiff's Motions for Discovery were improper, Defendants note that they "treated Plaintiff's motions as discovery requests and sent two October 3, 2014 responses." Docket no. 90 at 2.) Defendants attached copies of their discovery responses. (Docket no. 90-1.) Through his

Motion, Plaintiff makes the following discovery requests[4]:

> REQUEST NO. 1: ANY AND ALL E-mail or electronic communications regarding inmate Mark White #228524 between Defendants Klee, McRoberts & Condon and any other party between the dates January 1, 2013 and September 1, 2014;
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> REQUEST NO. 2: ANY AND ALL electronic messages or E-mail with Central Office between Defendants Klee, McRoberts & Condon between October 1, 2013 and September 1, 2014 regarding gang activity, thefts, strong arm robbery & extortion reports by any inmate housed at Adrian Correctional Facility during the periods afore noted;
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> 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;
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> 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;
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> 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;
>
> REQUEST NO. 6: Any and all housing Unit daily Log sheets for Housing Unit #1 at Gus Harrison Correctional Facility, Level II between November 1, 2013 and January 10, 2014 pertaining to inmate Mark White No. 228524 and any room searches of Unit #1 1-114-B, same dates;
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> REQUEST NO. 7: ANY AND ALL electronic messages, e-mails, letters from Defendants Klee, McRoberts, Condon, and the Legislative Corrections Ombudsman concerning inmate Mark White No. 228524 from January __, 2013 to September 1, 2014;
>
> REQUEST NO. 8: ANY AND ALL Medical reports from Chippewa Correctional Facility between July 8, 2014 and September 1, 2014;
>
> REQUEST NO. 9: ANY AND ALL inmates with an (sic) Special Threat Group (STG) label

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[4]Plaintiff's second Motion is entitled Plaintiff's First Amended Motion for Discovery. (Docket no. 88.) This title, coupled with the substantial similarity of the items requested, implies that Plaintiff intended to amend his initial discovery requests. Thus, the Court has considered only the requests included in his Amended Motion.

> housed in Chippewa Correctional Facility, particularly the number of Gangsters Disciples known to officials from July 8, 2014 to present;
>
> REQUEST NO. 10: ANY AND ALL monthly psychology reports regarding Psychologist Wallerstien (sic) and inmate Mark White No. 228524 from January 1, 2013 to July 7, 2014.

(Docket no. 90-1 at 2-9.) Defendants objected to most of Plaintiff's discovery requests, arguing, in sum, that the requests were overbroad, overly burdensome, irrelevant, protected by attorney-client privilege, seeking "information of a personal nature related to a MDOC employee" and could not be disclosed "because of security concerns," seeking personal information related to other MDOC prisoners, or available through other means. (*Id.*) Defendants further identified 37 pages worth of documentation that they assert are responsive to Request Nos. 1, 2, and 7 and 6 pages that they assert are responsive to Request No. 6; they note, however, that Plaintiff must pay a fee of $0.10 per page for photocopies before they will produce the documents. (*Id.*) And Defendants note that Plaintiff may request a copy of his medical record in response to Request Nos. 8 and 10; such a request would cost Plaintiff $0.25 per page. (*Id.*)

Plaintiff moves for an order compelling Defendants to produce the requested documents over their objections and for an order under Policy Directive 05.03.115 and M.C.L. § 333.26269 requiring the MDOC to loan him funds for his requested copies because he is an indigent prisoner. (Docket no. 92 at 2-3.) Defendants respond only that the information requested by Plaintiff would be inadmissible under Fed. R. Evid. 404(b) and that Plaintiff's request "cannot lead to discoverable evidence because Plaintiff is seeking it solely to show bad character, which is always inadmissible." (Docket no. 93 at 3.) They also add that they should not be required to subsidize Plaintiff's litigation expenses simply because of his IFP status. (*Id.* at 3-4.)

Although Defendants note that "the discovery rules are broader than what might be admissible at trial," their implication that Rule 404(b) evidence is never discoverable simply because it would be inadmissible is incorrect. Parties may obtain discovery on any matter that is not privileged and is relevant to any party's claim or defense if it is reasonably calculated to lead to the discovery of admissible evidence. Fed.R.Civ.P. 26(b)(1). "Relevant evidence" is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed.R.Evid. 401. But the scope of discovery is not unlimited. "District courts have discretion to limit the scope of discovery where the information sought is overly broad or would prove unduly burdensome to produce." *Surles ex rel. Johnson v. Greyhound Lines, Inc.*, 474 F.3d 288, 305 (6th Cir. 2007). It is under this standard that the Court must consider Plaintiff's request, not whether the requested discovery would be admissible under a particular Rule of Evidence. The Court will, therefore, address each of Plaintiff's requests in turn.

A. Request Nos. 1 and 7

Plaintiff's first request seeks emails between Defendants regarding Plaintiff between January 1, 2013 and September 1, 2014. Plaintiff's Request No. 7 adds emails from the Legislative Corrections Ombudsman. Plaintiff's primary claim is that Defendants conspired to punish him for refusing to provide information regarding other inmates. Plaintiff argues that these emails would show that Defendants had personal knowledge of his need for protection. The Court agrees with Plaintiff that the information he seeks is reasonably calculated to lead to the discovery of admissible evidence. Nevertheless, the Court also agrees with Defendants that Plaintiff's request is overbroad. Plaintiff alleges that he was originally asked to provide information in October of 2013 and that the

retaliation against him occurred in December of 2013. Thus, emails significantly outside this narrow window are irrelevant. The Court will order Defendants to produce emails between Defendants regarding Plaintiff, and emails from the Legislative Obmudsman regarding Plaintiff, from September 1, 2013, through January 31, 2014.

The Court is also cognizant, however, that such emails may contain privileged communication or personal information that could lead to security concerns. If so, Defendants may redact such information from the documents that they produce and produce a privilege log in accordance with Fed. R. Civ. P. 26(b)(5).

B. Request No. 2

Plaintiff's second request seeks any emails between Defendants regarding "gang activity, thefts, strong arm robbery & extortion reports by any inmate" housed at the prison. Again, Plaintiff asserts that this information is relevant. Here, the Court is persuaded by Defendants that Plaintiff's request is overbroad and unduly burdensome. Although limited by date, as Defendants note, "the information requested may be imbedded in emails but not necessarily described in the subject/topic of the email." (Docket no. 90-1 at 4.) And while Defendants could perform a search of the email system, Plaintiff cannot show that there is any connection between, for example, a theft that may have occurred in June 2014 and his claims of retaliation in Fall 2013. The Court will deny Plaintiff's Motion with regard to Request No. 2.

C. Request Nos. 3, 4, 5, and 9

In his Request Nos. 3, 4, 5, and 9, Plaintiff seeks the medical records and incident reports from three other inmates, Terry Ridley, T. Hill, and Michael Little, as well as a list of inmates labeled as part of a Special Threat Group. Defendants argue that this information is irrelevant and

contains the private information of other inmates, which could lead to security concerns. (Docket no. 90-1 at 5-6.) As a general matter, the Court finds that Plaintiff's requests are reasonably calculated to lead to the discovery of admissible evidence. While each request raises its own concerns, Plaintiff's Complaint, in substance, alleges that Defendants retaliated against him for his refusal to provide information and that they used other inmates as their instruments of retaliation. Therefore, Defendants' knowledge of the other inmates plays a central role in Plaintiff's claims.

With regard to Mr. Ridley's information, Plaintiff seeks misconduct reports related to assault and mental health history and statements. (Docket no. 90-1 at 5.) Plaintiff asserts that this information is necessary to prove that Mr. Ridley was "a violent mental health prisoner," that Defendants were aware of his history of violence, and that Defendants placed him in a cell with Mr. Ridley in retaliation. The Court acknowledges that some information regarding Mr. Ridley's history may be necessary for Plaintiff to support his claim that Defendants knew Mr. Ridley was a violent prisoner, but his instant request is overly broad and raises serious security concerns. Therefore, the Court will order Defendants to produce 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, for attorney's-eyes-only inspection by counsel as discussed further herein. Plaintiff's request for Mr. Ridley's mental health history is denied.

With regard to Mr. Hill, Plaintiff's initial request seeks the same information that he seeks with regard to Mr. Ridley. In his Motion to Compel, however, Plaintiff states that he seeks the information "to prove that [Hill] was given an elaborate knife to kill plaintiff." (Docket no. 92 at 2.) Likewise, Plaintiff's request for documents regarding Mr. Little appears to be limited to Mr. Little's alleged attack on Plaintiff. The Court will, therefore, order Defendants to produce 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. Any such documents must be produced for attorney's-eyes-only inspection by counsel as discussed herein.

With regard a listing of "[all] inmates with an (sic) Special Threat Group (STG) label housed in Chippewa Correctional Facility," Plaintiff's request is overbroad. Plaintiff has provided the Court with no basis for this request and appears to be fishing for information related to other inmates. The Court will deny Plaintiff's request.

D. Request Nos. 6, 8, and 10

Plaintiff's Request No. 6 seeks housing information. Defendants indicate that there are six pages of information responsive to Plaintiff's request. Plaintiff's Request Nos. 8 and 10 each request Plaintiff's own medical reports, which he may request under OP 03.04.108B. Thus, Plaintiff's Motion relates only to his request to proceed without payment, which the Court will address below.

E. Payment of Fees

As noted, Defendants contend that Plaintiff must pay $0.10 per page for copies of discovery materials and $0.25 per page for his medical records. Plaintiff contends, however, that under Policy Directives 05.03.115(HH) and 05.03.116, "funds must be loaned to indigent prisoners for copies of any and all exhibits necessary for court" and that under MCL §333.23269, if a Plaintiff is indigent, medical records "must be provided and claimed as a debt to a plaintiff's prisoner account." (Docket no. 92 at 2.) Defendants respond that "discovery costs generally fall on the requesting party" and

that "Defendants are not required to subsidize plaintiff's civil litigation." (Docket no. 93 at 4 (citations omitted).)

With regard to discovery materials, Policy Directive 05.03.115 sets for the requirements for prison law libraries and does not contain a section HH; it sets forth no requirements regarding payment for copies or exhibits. *See* PD 05.03.115. Policy Directive 05.03.116 concerns prisoners' access to the courts, and Plaintiff appears to rely on the following provisions:

> M. Prisoners shall be provided photocopying services to obtain copies of items needed for legal research. Prisoners also shall be provided photocopying services to obtain copies of documents in their possession, or available to them in the law library, which are necessary for the prisoner to file with a court or serve on a party to a lawsuit. Prisoners shall use the Legal Photocopy Disbursement Authorization form (CSJ-602) to request photocopying; the forms shall be available to prisoners in the housing unit and institutional law libraries. A fee of 10 cents shall be charged for each page copied.
>
> N. Prisoners who lack sufficient funds to pay for copies of documents in their possession, or available to them in the law library, which are necessary for the prisoner to file with the court or serve on a party to a lawsuit shall be loaned funds to pay for the copying. Funds shall not be loaned, however, for copying a document which can otherwise be reproduced by the prisoner, except if the document is notarized or was created for the prisoner through the Legal Writer Program and as otherwise required by court order for service of a federal lawsuit.

PD 05.03.116.

By their plain language, the sections of PD 05.03.116 on which Plaintiff relies apply only to items needed for legal research or "documents in [the prisoner's] possession . . . which are necessary for the prisoner to file with a court or serve on a party to the lawsuit." PD 05.03.116(M). The discovery materials that Plaintiff has requested are neither research related nor in Plaintiff's possession, nor are they to be filed with the court or served on Defendants. Moreover, Fed. R. Evid. 34 requires a party "to produce and permit the requesting party . . . to inspect, copy, test, or sample"

the requested documents; nothing in Rule 34 requires the producing party to provide copies. Therefore, to the extent that Defendants have any documents to produce in accordance with this Order, Plaintiff may inspect the documents (at no cost), take notes, and photocopy the documents at his own expense. If, however, Plaintiff files a motion with the Court that requires the Court to review a specific document, or if this matter proceeds to trial and a specific document is to be produced as an exhibit, the MDOC must provide Plaintiff with the funds to copy any such document in accordance with its own policy directive.

With regard to Plaintiff's medical record, Plaintiff relies on MCL § 333.26269 of Michigan's Medical Records Access Act, which provides, in relevant part, that "a health care provider, health facility, or medical records company shall waive all fees for a medically indigent individual." MCL § 333.26269(e)(3). No court has specifically addressed whether this section supersedes MDOC Policy Directive 03.04.108, which requires prisoners to pay a $0.25 per page fee for their medical records. But the Act states that "'medically indigent individual' means that term as defined in section 106 of the social welfare act." MCL § 333.26263(k). And the Social Welfare Act defines a "medically indigent individual" as "[a]n individual receiving family independence program benefits or an individual receiving supplemental security income . . . " or an individual meeting a list of six specific requirements, one of which is that "[t]he individual is not an inmate of a public institution except as a patient in a medical institution." MCL § 400.106. Plaintiff has provided no evidence to suggest that he is a recipient of welfare benefits, and he is an inmate at a public institution. Therefore, he is not a "medically indigent individual" under the Social Welfare Act or the Medical Records Access Act; thus, the Court need not address whether the waiver provision of MCL 333.26269 applies to prisoners. Plaintiff may review his own medical record under MDOC

guidelines but may only make copies of the records at his own cost or under PD 05.03.116 if any such records must be filed with the Court.

III. Plaintiff's Motion to Appoint Counsel [66]

As the Court has previously noted, appointment of counsel for prisoners proceeding *in forma pauperis* is governed by 28 U.S.C. § 1915, which states that "[t]he court may request an attorney to represent any person unable to afford counsel." 28 U.S.C. § 1915(e)(1). The Sixth Circuit has stated:

> Appointment of counsel in a civil case is not a constitutional right. It is a privilege that is justified only by exceptional circumstances. In determining whether 'exceptional circumstances' exist, courts have examined the type of case and the abilities of the plaintiff to represent himself. This generally involves a determination of the complexity of the factual and legal issues involved.

Lavado v. Keohane, 992 F.2d 601, 605-606 (6th Cir. 1993) (internal quotations and citations omitted). *See also Glover v. Johnson*, 75 F.3d 264, 268 (6th Cir. 1996) (citing Charles R. Richey, Prisoner Litigation in the United States Courts 75 (1995)("'Prisoners have no statutory right to counsel in civil rights cases. Instead, the appointment of counsel is within the court's discretion.'").

In his Motion, Plaintiff does not address the complexity of his claims or the factual of legal issues involved; instead, the basis of Plaintiff's Motion is his placement in Administrative Segregation at the prison. (*See* docket no. 66.) Plaintiff asserts that after being placed in Administrative Segregation, he has been denied legal research material, legal mail, and access to social-media input, including newspapers, the law library, and legal-research systems. (*Id.* at 1-2.) To the contrary, however, Plaintiff's Motion (and his other motions discussed herein) cite to relevant case law in support of his position. To date, Plaintiff has adequately alleged the claims forming the basis of this § 1983 lawsuit and he has shown a basic understanding of the legal process.

Nevertheless, Plaintiff's discovery requests related to other inmates' disciplinary records raise a delicate issue that pits security concerns against Plaintiff's right to discoverable information under the Federal Rules. As Defendants argue, providing the information requested by Plaintiff could pose a threat to the security of the facility. But Defendants cannot use these security concerns as a shield against otherwise proper discovery where those concerns can be alleviated. The Court will, therefore, grant Plaintiff's Motion to Appoint Counsel. Once counsel has been appointed, Defendants will produce these materials to Plaintiff's counsel for attorneys eyes only.

IV. Defendants' Motion for Leave to Take Plaintiff's Deposition [87]

Defendants move for leave of Court to take Plaintiff's deposition. (Docket no. 87.) Rule 30(a)(2)(B) provides that a party "must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(2) . . . if the deponent is confined in prison." Fed. R. Civ. P. 30(a)(2)(B). Plaintiff does not object to having his deposition taken but argues that Defendants should not be permitted to do so while he is unrepresented. (Docket no. 91 at 1-2.) Plaintiff argues that in his experience, "records are often 'amended' in favor of the State's position without a neutral party to oversee the proceedings." (*Id.* at 1.) Plaintiff also offers to take a lie detector test and notes that he needs an expert witness to testify to the results of his closed head trauma, although these issues are irrelevant to the issue at hand.

With regard to Plaintiff's assertion that the Court should require a neutral party to oversee the proceedings, the Federal Rules already require that a deposition be administered by "an officer authorized to administer oaths" or "a person appointed by the court where the action is pending to administer oaths and take testimony." Fed. R. Civ. P. 28(a). Moreover, the individual must not be "a person who is any party's relative, employee, or attorney; who is related to or employed by any

party's attorney; or who is financially interested in the action." Fed. R. Civ. P. 28(c). Thus, Plaintiff's concerns are unfounded. The Court will, therefore, grant Defendants' Motion. But because the Court will appoint counsel, Defendants will be ordered to wait until counsel has been appointed to take Plaintiff's deposition. Counsel for Defendants may make arrangements to take Plaintiff's deposition at a date and time convenient for the correctional facility at which he is incarcerated after Plaintiff's counsel is appointed.

IT IS THEREFORE ORDERED that Plaintiff's Motions for Discovery [86 and 88] are **DENIED**.

IT IS FURTHER ORDERED that Plaintiff's Motion to Compel [92] is **GRANTED IN PART AND DENIED IN PART** as follows:

a. Defendants are ordered to produce emails between Defendants regarding Plaintiff, and emails from the Legislative Obmudsman regarding Plaintiff, from September 1, 2013, through January 31, 2014. Defendants may redact privileged communication or personal information from any such emails and must provide a privilege log pursuant to Fed. R. Civ. P. 26(b)(5);

b. Defendants are ordered to produce 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, for attorney's-eyes-only inspection by counsel;

c. Defendants are ordered to produce 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 for attorney's-

eyes-only inspection by counsel; and

d. Plaintiff's remaining requests, including his request to have copying fees waived or loaned to him, are denied.

IT IS FURTHER ORDERED that Plaintiff's Motion for Appointment of Counsel [66] is **GRANTED**.

IT IS FURTHER ORDERED that Defendants' Motion to take Plaintiffs' Depositions [87] is **GRANTED**. Defendants' Counsel is ordered, however, to wait until after Plaintiff's Counsel is appointed to schedule Plaintiff's deposition.

NOTICE TO THE PARTIES

Pursuant to Federal Rule of Civil Procedure 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: January 14, 2015

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

PROOF OF SERVICE

I hereby certify that a copy of this Order was served upon Mark White and Counsel of Record on this date.

Dated: January 14, 2015

s/ Lisa C. Bartlett
Case Manager