

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

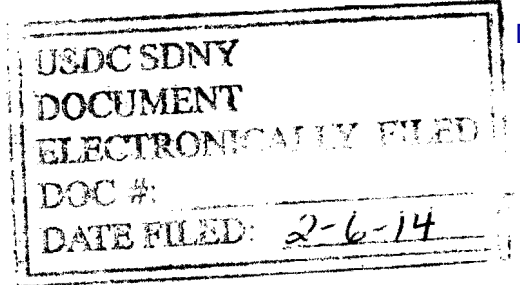
DR. CYRIL N. KENDALL,

Plaintiff,

- against -

ANDREW M. CUOMO, et al.,

Defendants.



OPINION

12 Civ. 3438 (ALC) (RLE)

RONALD L. ELLIS, United States Magistrate Judge:

Before the Court is *pro se* incarcerated Plaintiff Dr. Cyril N. Kendall’s (“Kendall”) Motion for an Order of Perjury. (Docket No. 70.) Defendants have submitted a response in opposition. (Docket No. 73.) For the following reasons, Kendall’s motions is **DENIED**.

I. BACKGROUND

On April 30, 2012, Kendall filed this action pursuant to 42 U.S.C. § 1983. The alleged incidents occurred at Fishkill Correctional Facility between October 3, 2011 and November 15, 2011 and at Orleans Correctional Facility between November 17, 2011, and the time of the filing of the Complaint. The action was referred to the undersigned for general pretrial matters on May 10, 2012.

II. DISCUSSION

Kendall requests an “order of perjury” against New York State Attorney General Eric T. Schneiderman (“Schneiderman”) and Assistant Attorney General Rebecca Ann Durden (“Durden”), and an order of perjury against each of the Defendants for “procuring” their attorneys to make false statements on legal documents. The Court construes Kendall’s request for an order of perjury as a request for sanctions against Defendants under the Court’s inherent power for their attorneys’ allegedly false statements to the Court.


Kendall claims that Schneiderman and Durden perjured themselves in their response to Kendall's objections to the Court's September 3, 2013 Order denying Kendall's motion for a protective order by 1) referring to the order as a "Report and Recommendation" and (2) indicating that Kendall had stated that the Defendants opposed his motion for a protective order. (Docket No. 61, at ¶ 1, 4)

These two statements are incorrect. The September 3, 2013 Order was not a Report and Recommendation, (Docket No. 58), and Kendall did not state that Defendants opposed his motion, but had noted that the motion was unopposed. (Docket No. 60, at ¶ 18.) As to the latter fact, Defendants appear to be aware that Kendall argued the opposite because they quote him in their response as stating, "[t]he defendants did not opposed [sic] the protective order motion." (*Id.*) While both statements identified by Kendall are inaccurate, there is no indication that either was intentionally false or material to the Court's consideration.

III. CONCLUSION

For the reasons set forth above, Kendall's Motion for an Order of Perjury is **DENIED**. This resolves Docket Number 70.

SO ORDERED this 6th day of February 2014
New York, New York


The Honorable Ronald L. Ellis
United States Magistrate Judge