

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MARY BARTH,

Plaintiff,

vs.

SOUTHWEST GENERAL HEALTH
CENTER, RICHARD PHILLIPS and
MARILYN McNAMARA,

Defendant.

Case No: 1:05 CV 1673

JUDGE OLIVER
MAGISTRATE HEMANN

**DEFENDANTS' MOTION TO
AMEND ANSWER**

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure and the Court's Case Management Order, Defendants, Southwest General Health Center ("Southwest"), Richard Phillips ("Phillips") and Marilyn McNamara ("McNamara") (collectively referred to herein as "Defendants"), hereby move this Court for an Order permitting Defendants to amend their Answer to Plaintiff's Complaint.

The reason for this Motion is that, due to statements made by Plaintiff's legal counsel at the Case Management Conference which clarified the specifics and scope of Plaintiff's various claims, Defendants would like to identify additional Affirmative Defenses. Specifically, Plaintiff's counsel identified various acts, which stretch back in

time beyond the applicable statutes of limitations, as the bases for certain of Plaintiff's claims. Defendants were unaware of these claims, as they are not detailed with any degree of specificity in the Complaint. Further, Plaintiff's counsel's description of the incidents upon which Plaintiff bases some of her claims also made it clear that Defendants may be able to raise additional affirmative defenses like waiver, estoppel, accord and satisfaction, and the failure to exhaust administrative remedies. In particular, Plaintiff's counsel described instances where Plaintiff requested various accommodations and changes and they were granted to her satisfaction. Lastly, Plaintiff's counsel identifies incidents that Plaintiff never raised through Southwest's internal grievance procedure. In fact, the first time Defendants were made aware of them was by Plaintiff's counsel at the Case Management Conference.

A copy of proposed Defendant's First Amended Answer is attached hereto as **Exhibit A.**

DATED this 15th day of November, 2005.

STARK & KNOLL CO., L.P.A.

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Health Center, Richard Phillips and Marilyn

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of November, 2005, a copy of the foregoing was filed with this Court's Electronic Filing System (ECF). I also certify that a copy of the foregoing was distributed to all parties to this action electronically and by U.S. Regular mail to the following individuals:

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