

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**IN RE: OHIO EXECUTION  
PROTOCOL LITIGATION**

**Case No. 2:11-cv-1016  
JUDGE GREGORY L. FROST  
Magistrate Judge Mark R. Abel**

**This document relates to: All Parties.**

**ORDER**

On October 4, 2013, Defendants filed a notice indicating that the Ohio Department of Rehabilitation and Correction has adopted a new execution protocol that will become effective on October 10, 2013. (ECF No. 323.) Defendants had previously informed the Court that this action would occur, which led the Court to state the following in its August 12, 2013 Order:

Following the adoption of the new protocol, the parties shall request a status conference with this Court. At that conference, the Court will address with the parties whether new pleading is necessary (likely leading to new motions) or whether the Court can simply reactivate the terminated motions and proceed to dispose of them on their merits.

(ECF No. 316, at Page ID # 9085.) The Court therefore sets a telephone status conference for Tuesday, October 15, 2013, at 12:00 p.m. Counsel will be emailed the call-in information. The parties must confer prior to the conference and come to agreement where necessary on (1) whether new pleading is necessary; (2) how soon Plaintiffs can file any such new pleading; (3) whether, instead of new pleading, the Court should reactivate the previously terminated motions to dismiss; (4) whether, instead of new pleading and the reactivation of the motions to dismiss, Defendants instead elect to file answers and obtain a trial date; and (5) any other issues that the parties recognize the new protocol presents.

In the August 12, 2013 Order, the Court also addressed the April 26, 2013 motion to

intervene filed by Gregory Lott. (ECF No. 290.) This Court stated:

Lott's proffered complaint targets the current protocol, which leads to at least two possibilities. First, the motion may essentially be moot given the forthcoming new protocol, which would mean that Lott would need to file a new motion targeting the new protocol after its adoption if he is not permitted to intervene beforehand. Second, even if Lott's proffered complaint would remain viable, Defendants' opposition to his intervention, largely predicated on a statute of limitations argument, may have no application to the new protocol depending on the content of that protocol. In light of Lott's March 19, 2014 scheduled execution date, the Court is reluctant to decide the merits of intervention at this time or to terminate the motion, but this Court also recognizes that time is of the essence to Lott. The Court reschedules the motion to intervene for a non-oral hearing on October 7, 2013, and encourages the parties to discuss and then advise the Court whether it can proceed to address the motion before that date or whether it would be a waste of resources given the forthcoming new protocol.

(ECF No. 316, at Page ID # 9086-87.) In response to the foregoing, counsel for Lott filed an October 7, 2013 notice in which he summarized what this Court had done and stated:

Gregory Lott now gives notice to this Court that the new protocol announced on October 4, 2013, contains significant changes from the earlier protocol. It is anticipated that the Consolidated Omnibus Complaint will almost certainly be amended. These amendments will necessarily impact this Court's decision on Lott's Motion to intervene.

(ECF No. 324, at Page ID # 9587.) Lott's filing is remarkably unhelpful.

This Court already knows what it did. The Court also already knows that the new protocol contains changes. And the Court already knows based on prior discussions with the parties that amendment of the pleading is all but a certainty. What the Court wanted to know and what Lott curiously declined to tell this Court is whether he wanted the Court to proceed to address the motion to intervene or whether he agreed that it would be a waste of resources given the new protocol. This is why the Court encouraged the parties to confer on the issues surrounding the motion to intervene and to advise the Court on their thoughts on how to proceed. The parties have elected not to provide the Court with any substantive guidance.

Lott's motion to intervene targets a moot protocol. Accordingly, the Court **DENIES WITHOUT PREJUDICE** the motion to intervene. (ECF No. 290.) Lott remains free to file a second motion to intervene targeting the new protocol. The parties also remain free to discuss whether grounds exist for opposing such a motion in light of the adoption of the new protocol and whether Defendants would oppose Lott simply joining the case by being added to a new omnibus complaint if Plaintiffs intend to file such a pleading.

**IT IS SO ORDERED.**

/s/ Gregory L. Frost  
GREGORY L. FROST  
UNITED STATES DISTRICT JUDGE