

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

SEAN SWAIN, : Case No. 4:14-cv-2074
Plaintiff, : Judge Benita Y. Pearson
v. :
GARY C. MOHR, *et al.*, :
Defendants. :

**DEFENDANTS' MOTION TO EXCUSE THE APPEARANCE AND PARTICIPATION
OF TEN (10) OF THE ELEVEN (11) NAMED DEFENDANTS DURING THE
TELEPHONIC CASE MANAGEMENT CONFERENCE SCHEDULED FOR
WEDNESDAY, JANUARY 28, 2015 AT 1:30 P.M.**

Counsel for the eleven (11) named and served party-Defendants named herein now timely moves the Court to excuse each of their respective appearances and participation in the Telephonic Case Management Conference currently scheduled for Wednesday, January 28, 2015 at 1:30 P.M. (Doc. # 12), with the exception of lead Defendant, ODRC Staff Counsel Trevor Clark. The attached Memorandum supports Defendants' Motion.

Respectfully submitted,

MICHAEL DEWINE (0009181)
Ohio Attorney General

s/Thomas C. Miller

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Trial Counsel for Defendants, Gary C. Mohr, Terry Tibbals, Rob Jeffreys, Angela Hunsinger, Trevor Clark, Uriah Melton, Lt. Dahlby, Penny Gosser, Lt. Barlow, Thomas King, and Jay Forshey

MEMORANDUM

Undersigned was served with the Court's Case Management Conference Scheduling Order on December 17, 2014. Doc. # 12 ("the Order"). In pertinent part, the Order states,

LR 16.3(b) requires the attendance of both parties and lead counsel. "Parties" means either the named individuals or, in the case of a corporation or similar legal entity, that person who is most familiar with the actual facts of the case. "Party" does not necessarily mean in-house counsel or someone who has "settlement authority."

If the presence of a party or lead counsel will constitute an undue hardship or a continuance is needed, a written motion to excuse the presence of such person or to continue must be filed **no later than fourteen (14) days** prior to the CMC.

Doc. # 12, p. 2-3 (emphasis in original).

Undersigned timely seeks permission to excuse the attendance of ten (10) of the individual party-Defendants. For the reasons that follow, undersigned respectfully asks that this request be granted.

First, there are eleven (11) individual party-Defendants, all of whom are employees of the Ohio Department of Rehabilitation and Correction (ODRC). These named Defendants range from Gary C. Mohr, the Director of the ODRC, all the way to Penny Gosser, identified as an Administrative Professional. Of the eleven (11) Defendants, six (6) of them work at the Mansfield Correctional Institution (ManCI) in Richland County, Ohio, two (2) of them work at the ODRC Operations Support Center in Franklin County, Ohio, one (1) works in Madison County, Ohio, one (1) works in Mahoning County, Ohio, and one (1) is a Regional Director who is frequently working at various sites located around the State. Moreover, of those six (6) who are employed at the Mansfield Correctional Institution, it is not known at present what shift they are assigned to. If assigned to some shift other than days, and/or have Wednesday, January 28, 2015 as a scheduled day off from work, it would then be necessary for those Defendants to report

to work for the sole purpose of the CMC, or otherwise provide a private phone number where they can be reached at the designated date and time. The same would hold true for the Regional Director, who is frequently out of the office and travelling from institution to institution.

Second, the Order provides that “**Counsel for Defendants shall set up the conference call and contact Chambers directly at 330-884-7435, with all participants on the line.**” *Id.*, p. 2 (emphasis in original). Conceivably then, undersigned, as lead counsel for the Defendants, would have to place at a minimum, five (5) separate phone calls, and arrange for within ManCI, up to six (6) different extensions, together with a phone call to Plaintiff’s counsel, Mr. Kerger.

It is not known if Mr. Kerger will be having his client, Plaintiff Sean Swain participate from the Ohio State Penitentiary (OSP) in Mahoning County, Ohio, or if Mr. Kerger will ask to have Plaintiff Swain excused. In any event, it may be necessary for undersigned to have to place at a maximum thirteen (13) separate phone calls to include all necessary participants in to the conference call.

Although an organization (ODRC) is not a named Defendant in this case, undersigned proposes to the Court that the attendance and participation of the following persons be permitted in lieu of all eleven (11) party-Defendants: (1) Undersigned as lead Counsel for Defendants; (2) Defendant, Staff Counsel for the ODRC, Trevor Clark as “lead Defendant,” who is the most knowledgeable among all the named Defendants about the facts of this case; (3) Staff Counsel for ODRC and non-Defendant Austin Stout who has settlement authority for ODRC; and (4) Staff Counsel for ODRC and designated “E-Discovery Coordinator,” Lauren Chalupa.

If this request is found not well-taken and is denied, either in whole or in part, it is requested that undersigned be advised of that as soon as possible so that arrangements can be made to include all required participants.

Respectfully submitted,

MICHAEL DEWINE (0009181)
Ohio Attorney General

s/Thomas C. Miller

THOMAS C. MILLER (0075960)

Assistant Attorney General

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Trial Counsel for Defendants, Gary C.

Mohr, Terry Tibbals, Rob Jeffreys, Angela

Hunsinger, Trevor Clark, Uriah Melton, Lt.

Dahlby, Penny Gosser, Lt. Barlow, Thomas

King, and Jay Forshey

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing, DEFENDANTS' MOTION TO EXCUSE THE APPEARANCE AND PARTICIPATION OF TEN (10) OF THE ELEVEN (11) NAMED DEFENDANTS DURING THE TELEPHONIC CASE MANAGEMENT CONFERENCE SCHEDULED FOR WEDNESDAY, JANUARY 28, 2015 AT 1:30 P.M., has been filed electronically with the Court's ECF System this 21st day of January, 2015. Counsel for Plaintiff will receive notice by email notification through the Court's ECF Notification System.

s/Thomas C. Miller

THOMAS C. MILLER (0075960)