

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

SEAN SWAIN,	)	CASE NO. 4:14cv2074
	)	
Plaintiff,	)	JUDGE BENITA Y. PEARSON
	)	
v.	)	<b><u>CASE MANAGEMENT</u></b>
	)	<b><u>CONFERENCE ORDER</u></b>
GARY C. MOHR, <i>et al.</i> ,	)	
	)	<b><u>CASE MANAGEMENT PLAN. <a href="#">LR</a></u></b>
Defendants.	)	<b><u><a href="#">16.1(b)(4)</a></u></b>

1. On January 28, 2015, the Court, together with the parties of this lawsuit, conducted a Telephonic Case Management Conference.

2. The following parties were present:

A. Defendant: Trevor Clark.

B. Ohio Department of Rehabilitation and Correction Representatives: Austin Stout and Lauren Chalupa.

3. The following attorneys were present:

A. Plaintiff's counsel: Richard M. Kerger.

B. Defendants' counsel: Thomas C. Miller.

4. A Discovery Plan was filed on January 27, 2015.

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**REGISTRATION FOR RECEIPT OF ELECTRONIC DOCUMENTS**

If it has not already been done, all counsel must complete Attorney Registration Forms and return them to the Clerk of Court as soon as possible so that attorney user accounts can be established. An Attorney Registration Form is in the Policies and Procedures Manual. In addition, counsel can easily register online at:

<http://www.ohnd.uscourts.gov/home/clerk-s-office-and-court-records/electronic-filing/cm-ecf-attorney-registration/>

As soon as accounts are established, counsel will be provided with user identification names and passwords which will permit access to the electronic filing system and which shall serve as signatures for any and all documents filed electronically.

The Clerk's Office has established an Electronic Filing Help Desk at 1-800-355-8498 to answer questions and provide assistance should difficulties arise.

**RULINGS ON ADDITIONAL MATTERS PURSUANT TO LR 16.3(b)(2)**

5. Based on the recommendation of the parties, the Court determined that this case will proceed on the Standard Track.

6. The parties agree that the case may be suitable for mediation after the completion of some discovery.

7. The parties do not consent to the jurisdiction of the United States Magistrate Judge pursuant to [28 U.S.C. § 636\(c\)](#) at this time. The Court, however, may refer a pre-trial matter to a magistrate judge for assistance, if necessary.

8. There are no case-specific rulings as to the type and extent of discovery. Parties are to follow the limits established by the Local and Federal civil rules.

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9. The parties have agreed to a method for discovery of electronically-stored information.

10. (A) The cutoff date for discovery shall be November 30, 2015. The parties shall timely provide the information requested during formal discovery and comply with their disclosure obligations pursuant to [Fed. R. Civ. P. 26](#). In the event that expert discovery is necessary, initial expert reports are due forty-five (45) days before November 30, 2015. Responsive reports, if necessary, shall be submitted twenty (20) days before November 30, 2015.

(B) A party may take a discovery deposition of its opponent's expert witness only after the exchange of reports has occurred. If necessary, the parties shall agree upon dates for the discovery depositions of an opponent's expert witness. If a party chooses not to use its own expert witness, it will be permitted to take the discovery deposition of its opponent's expert witness only after submitting a written statement advising the Court and opposing counsel to that effect.

A party may not call an expert witness to testify unless a written report prepared and signed by the witness has been procured and provided to opposing counsel. The report shall contain a complete statement of all opinions of the expert as to each issue on which she will testify and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness in the previous 10 years; the compensation to be paid for the study and testimony in the case; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years. An expert will not be permitted to testify or provide opinions on issues not raised in her report.

11. Without leave of Court, no discovery or disclosure materials may be filed, except as necessary to support dispositive motions. If a party intends to rely on deposition testimony in support of its position on a motion, the Court prefers the filing of the entire deposition rather than

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excerpts, unless the party truly believes that excerpts are sufficient, and with the proviso that any other party who believes the excerpts offered are not sufficient is free to file the entire deposition. In any event, discovery and disclosure material submitted in support of any party's position shall be filed at the same time as that party's memorandum setting forth its position.

12. The cutoff for amending the pleadings and/or adding additional parties is March 31, 2015. The cutoff date, however, is merely a time limitation—not a blanket leave. A party must still demonstrate that an amendment is proper under [F.R.C.P. 15\(a\)](#). Absent written consent of the adverse party, the party seeking to amend at least must alert the Court and the adverse party to the substance of the proposed amendment by filing a Motion for Leave with an accompanying memorandum of law addressing the requirements of [Rule 15\(a\)](#). In all cases, the party seeking leave of Court to amend must certify that prior notice of the proposed amendment was given and the adverse party withheld consent.

13. The cutoff for filing dispositive motions is February 1, 2016. Oppositions are due March 2, 2016; replies are due March 16, 2016. Lead counsel of record shall confer with one another in person in order to prepare written stipulations as to all uncontested facts to be presented by the dispositive motion. The stipulations shall be filed with the Court on or before February 1, 2016.

Before a party may file a dispositive motion, the party's counsel must submit a written request to be dismissed to opposing counsel. Opposing counsel shall either agree to the request for dismissal or shall give explicit reasons in writing for refusing to do so. Upon such refusal, the party intending to move shall reassess its position and may file a dispositive motion if that party still believes dismissal or summary judgment is warranted. The dispositive motion must be accompanied by a statement certifying that this exchange has occurred.

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14. A Status Conference will be held on August 12, 2015 at 12:00 p.m. The conference will be conducted *via* telephone unless circumstances require otherwise. Lead counsel must be present unless excused by the Court upon written motion. Parties' attendance is welcome, but not mandatory. Counsel for Defendants is to set up the conference call, which the Court shall join after all participants on the line. Counsel is to set up the conference call and contact Chambers directly at 330-884-7435 with all participants on the line. Counsel should notify the Court in advance of the Status Conference if the matter has settled.

The agenda for the Status Conference includes the posture of the case and any other topics the parties may wish to discuss.

15. At this time, the parties do not anticipate the need for a protective order, but will file one as the need arises. A general format is suggested in [Appendix L](#) of the Local Rules.

Any proposed order will be rejected by the Court unless it provides that, where materials designated "confidential" are used in support of or in opposition to a motion, the party so using the material shall file the document under seal. *See* Electronic Filing Policies and Procedures Manual at ¶¶ 19 and 24. Manually filed sealed documents shall not be presented to the Court unless electronic filing is not possible. Agreed protective orders which comply with the above will be approved, but with the understanding that, in the event this case should go to trial, no materials used in open court shall be entitled to the continuing designation of "confidential."

If any party seeks to obtain judgment by either a motion to dismiss or a motion for summary judgment, only supporting confidential documentation, not the motions themselves, may be filed under seal.

16. **Remarks:** Counsel shall comply with [LR 8.1 and 5.2](#). See pages 9-12 of the Electronic Filing Policies and Procedures Manual for further instructions.

17. **Additional Rulings** Regarding Motions - [LR 7.1\(b\)-\(j\)](#):

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The Court will strictly enforce provisions regarding length of memoranda filed in support of motions. See [LR 7.1\(f\)](#). Motions for relief from the length restrictions must show good cause for such relief and must be made sufficiently in advance to permit the Court to rule and the Clerk's Office to issue the ruling. Motions for relief from length restrictions which are filed contemporaneously with the memoranda exceeding the page limits will be denied.

The Court will permit only the motion with its supporting memorandum, the memorandum in opposition, and a reply. No sur-replies will be permitted absent advance leave of Court.

IT IS SO ORDERED.

January 28, 2015  
Date

/s/ Benita Y. Pearson  
Benita Y. Pearson  
U.S. District Judge