

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

SEAN SWAIN,	:	Case No. 4:14-cv-2074
Plaintiff,	:	Judge Sara Lioi
v.	:	
GARY C. MOHR, et al.,	:	
Defendants.	:	

**DEFENDANTS' MOTION TO STRIKE, OR IN THE ALTERNATIVE, DISREGARD
PLAINTIFF'S RECENT MOTIONS FILED PRO SE (DOCS. # 34 & 35)**

On Wednesday, June 24, 2015, Plaintiff, Sean Swain (# 243-205), an inmate in the custody and control of the Ohio Department of Rehabilitation and Correction (ODRC), and presently housed at the Southern Ohio Correctional Facility (SOCF), filed two (2) *pro se* motions with the Court, one, Doc. # 34, titled "Plaintiff's Objections" to Judge Pearson's self-imposed disqualification Order (Doc. # 33), and another, Doc. # 35, titled "Plaintiff's Motion for Relief from this Court's Order [Doc. # 32] of March 17, 2015 pursuant to Civil Rule 60. The Court's Order of March 17, 2015 (Doc. # 32) denied Inmate Swain's request for a temporary restraining order.

Defendants now move the Court to strike, or in the alternative disregard Inmate Swain's *pro se* Motions. The attached Memorandum supports Defendants' Motion.

Respectfully submitted,

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MEMORANDUM

Inmate Swain is represented by counsel, Mr. Richard M. Kerger. As a represented party, Inmate Swain has no right to “hybrid representation, that is, a right to be heard both in person and by attorney.” *Surles v. Andison, et al.*, No. 07-CV-13555, 2014 WL 6886318 (E.D. Mich. Dec. 4, 2014) (*see* Doc. # 95, quoting *Moniz v. McKee*, No. 05-71699, at *9, (E.D. Mich. Sept. 25, 2007) (Battani, J.), citing *Crane v. Kentucky*, 476 U.S. 683 (1986); *McKaskle v. Wiggins*, 465 U.S. 168, 183 (1984) quoting *United States v. Foster*, 9 F.R.D. 367, 372 (S.D. N.Y. 1949); *Hill v. Carlton*, 399 Fed. Appx. 38, 44 (6th Cir. 2010)).

Further, 28 U.S.C. § 1654 provides, “In all courts of the United States the parties may plead and conduct their own cases personally *or* by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.” (emphasis added). Under the plain language of the Rule, there is no right to plead and conduct a case through both sources (pro se filings and filings by retained counsel) at the same time. *Surles, supra*, Doc. # 95, citing *Brasier v. Jeary*, 256 F.2d 474 (8th Cir. 1958), cert denied, 358 U.S. 867, rehearing denied, 358 U.S. 923.

Inmate Swain’s *pro se* Motions (Docs. # 34 & 35) are not properly before the Court because Inmate Swain is currently, and has been since this case’s inception, represented by counsel. Inmate Swain is not entitled to “hybrid representation, and the Sixth Circuit and other courts in this Circuit routinely strike and/or refuse to consider *pro se* pleadings and motions filed by represented parties. *See United States v. Flowers*, 428 Fed. Appx. 526, 530 (6th Cir. 2011) (collecting cases; *Jones v. Bradshaw*, 326 F. Supp.2d 857-858 (N.D. Ohio 2004); *United States v. Clark*, 250 F. Supp.2d 856 (S.D. Ohio 2002); *Jells v. Mitchell*, No. 1:98-CV-2453, 2011 WL

1257306, at *2-3 (N.D. Ohio Mar. 31, 2011); *Keenan v. Bagley*, No. 1:01-CV-2139, 2010 WL 1133238, at *1-2 (N.D. Ohio Mar. 19, 2010).

In one recent case from this District Court, in response to a motion to strike a represented party's *pro se* motions, the Court held the following:

'A court may strike only material that is contained in the pleadings.' *Fox v. Michigan State Police Dep't.*, 173 F. App'x 372, 372 (6th Cir. 2006). 'Pleadings' are defined by Fed. R. Civ. P. 7(a) to include a complaint; an answer to a complaint; an answer to a counterclaim designated a such; an answer to a crossclaim; a third-party complaint; an answer to a third-party complaint; and, if the court orders one, a reply to an answer.

The Notice of Appearance of *Pro Se* Counsel (Doc. No. 57) and the Motion for an Order of Judicial Notice (Doc. No. 58) are not pleadings and, therefore, are not subject to a motion to strike. The Court will construe the motion to strike (Doc. No. 59) as a motion to disregard these two documents, and so construed, the motion is **GRANTED**.

United States v. Rohner, No. 5:12-CV-2682, 2014 WL 4327923 (N.D. Ohio Aug. 27, 2014) (Lioi, J.)

As a result, whether stricken, or simply disregarded, the result is the same. Defendants have no preference of one order over another in this matter. Together with this Motion to Strike, or in the alternative, to simply disregard Inmate Swain's *pro se* Motions, Defendants have also filed contemporaneously, their Response in Opposition, upon largely the same grounds as stated herein.

In conclusion, because Inmate Swain is not entitled to hybrid representation, Defendants respectfully request this Honorable Court to strike Inmate Swain's *pro se* Motions (Docs. # 34 & 35) from the Clerk's docket. In the alternative, should the Court decline to strike the Motions, Defendants respectfully request that the Court disregard Inmate Swain's *pro se* Motions and so state in a journalized Order to that effect.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing, DEFENDANTS' MOTION TO STRIKE, OR IN THE ALTERNATIVE, DISREGARD PLAINTIFF'S RECENT MOTIONS FILED PRO SE (DOCS. # 34 & 35), has been filed electronically with the Court's ECF System this 8th day of July, 2015. Parties will receive notice by email notification through the Court's ECF Notification System.

s/Thomas C. Miller

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