

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
AT FRANKFORT  
CIVIL ACTION NO.: 05-18-KKC

TINA MICHELLE BLACK, et al.,

PLAINTIFFS

v.

FRANKLIN COUNTY, KENTUCKY, et al.,

DEFENDANTS

MEMORANDUM ORDER

This civil rights litigation was recently referred to the undersigned for resolution of pending discovery disputes and motions to amend pretrial deadlines and for a settlement conference, if appropriate.

On June 21, 2006, defendants moved to compel written discovery responses from a number of plaintiffs who had not responded to discovery requests served in January of this year. Plaintiffs only response is to request additional time,<sup>1</sup> until October 1, 2006 "due to the number of plaintiffs." Only sixteen plaintiffs remain at this time. Plaintiffs are forewarned that their response does not demonstrate good cause for the overdue responses. Nevertheless, in light of the recency of the referral of this motion to the undersigned and the fact that the requested

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<sup>1</sup>As defendants note in a reply memorandum, plaintiffs' response itself was untimely.

extension is just 22 days away, the court will grant the extension on this occasion.

On July 21, 2006, plaintiffs moved to compel defendants to produce both written records and an additional Rule 30(b)(6) witness concerning defendants' strip search policies. Specifically, plaintiffs seek copies of all strip search forms for all inmates confined between March 28, 2004 and the present, as well as copies of inmate files for 56 inmates identified in plaintiffs' Rule 26(a) disclosures.<sup>2</sup>

Defendants object to production of any inmate records outside of those pertaining to plaintiffs, on the basis that this case has not yet been certified as a class action and defendants' motion to strike class action allegations remains pending before the court. Therefore, defendants argue that information pertaining to inmates other than plaintiffs is irrelevant. Defendants also cite privacy concerns, and the burden and expense of searching and copying the records of other inmates.

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<sup>2</sup>In a Memorandum Opinion and Order of August 16, 2005, the court partially granted defendants' motions to dismiss the claims of certain plaintiffs. The court held that the claims of any plaintiff whose claims arose more than a year prior to the date the amended complaint was filed (5-9-05) would be dismissed as barred by the statute of limitations, reasoning that the claims of new plaintiffs do not relate back to the date the complaint was filed (3-28-05).

With respect to the production of a Rule 30(b)(6) witness, defendants state that they have no objection to producing a witness on the subject "of the strip search policies and procedures and application thereof" as requested by plaintiffs' counsel via correspondence dated May 31, 2006, but that plaintiffs never issued a Notice of Deposition for such a representative and failed to respond to defendants' request for more detailed information concerning the subject matter of the representative's testimony. Defendants also complain generally that, while they are willing to produce a Rule 30(b)(6) witness, they should not be forced to produce witnesses for deposition prior to being able to complete plaintiffs' depositions, which have been stalled pending receipt of plaintiffs' responses to written discovery. Plaintiffs filed no reply to defendants' response.<sup>3</sup>

Plaintiffs' motion concerning defendants' responses to written discovery requests will be denied absent a stronger showing of relevance or class certification. Plaintiffs' motion to compel a Rule 30(b)(6) representative will be denied

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<sup>3</sup>In their initial motion to compel, plaintiffs partially address the issue of timing, noting correctly that the Federal Rules do not permit one party to insist on production by another party prior to providing discovery. Nevertheless, plaintiffs offer to produce "three or four of their plaintiffs prior to or simultaneously with the requested [Rule 30(b)(6)] deposition."

for failure to comply with LR 37.1 as it does not appear that plaintiffs have exhausted good faith extrajudicial efforts to schedule the Rule 30(b)(6) representative prior to bringing the dispute before this court.

Plaintiffs have also moved for five OR six months extension of the pretrial deadlines agreed to by the parties and adopted by this court on November 14, 2005.<sup>4</sup> Although no prior extensions of the pretrial scheduling deadlines have been granted, the sole basis provided for the proposed lengthy extension is the current discovery dispute and defendants' refusal to produce the records of non-party inmates. Defendants oppose any extension unless the court certifies this litigation as a class action.

When a motion is made after the expiration of a deadline, "excusable neglect" must be demonstrated for the party's failure to act in a timely manner. Rule 6(b), Fed. R. Civ. P. In this case, defendants argue that plaintiffs have failed to meet this standard despite filing their motion for extension after the expiration of deadlines to amend the pleadings and to complete Rule 26(a)(2) expert disclosures. Defendants also dispute plaintiffs' contention that they need additional

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<sup>4</sup>For the most part, plaintiffs seek an extension of five months. However, plaintiffs seek at least a six months' extension of the deadline to amend their pleadings.

discovery prior to producing expert reports, noting that defendants produced the strip search reports and inmate files for all plaintiffs, as well as FCCC policies and procedures, over seven months ago.

The court having reviewed the pending motions, **IT IS ORDERED:**

1. Defendants' motion to compel discovery [DE #58] is **granted** in part, but plaintiffs' request for additional time likewise will be granted. Plaintiffs shall respond to the outstanding discovery not later than **October 1, 2006**. Should plaintiffs fail to timely comply with this order, the court will entertain a motion for discovery sanctions under Rule 37;

2. Plaintiffs' motion to compel discovery [DE #62] is **denied without prejudice to renew** upon a ruling on the motion for class certification and/or upon full compliance with LR 37.1;

3. Plaintiffs' motions for an extension of the deadline to amend pleadings [included in DE #45] and of all other pretrial deadlines [DE #62] are **granted in part** and **denied in part** as follows:

a. The deadline to amend pleadings is extended until **October 2, 2006**;

b. All discovery shall be commenced in time to be

completed by **February 28, 2007**, with joint or separate status reports to be filed the same date;

c. Any dispositive motions shall be filed not later than **March 20, 2007**;

d. Any motions in limine shall be filed not later than **April 5, 2007**;

e. Plaintiffs must complete Rule 26(a)(2) expert disclosures not later than **October 2, 2006**, with defendants to make corresponding disclosures not later than **November 29, 2006**;

f. The final pretrial dates of March 19, 2007 and April 24, 2007 shall be **vacated**, with this record to be submitted to the presiding district judge upon entry of this order to schedule new dates if appropriate and for ruling on pending matters not referred to the undersigned [DE ##42, 45, 52, 53, 60];

g. NO FURTHER EXTENSIONS OF THESE DEADLINES WILL BE GRANTED ABSENT A STRONG SHOWING OF GOOD CAUSE SUPPORTED BY APPROPRIATE AFFIDAVIT, unless class certification is granted;

4. Defendants' motion for an extension of time in which to produce expert reports [DE #68] is **granted** as specified in ¶3(e) of this Order;

5. If the parties jointly request a court-convened status conference, joint status report to be filed on or before **October 10, 2006** with mutually agreeable dates.

This 8<sup>th</sup> day of September, 2006.



**Signed By:**

**J. Gregory Wehrman** *J.G.W.*

**United States Magistrate Judge**