

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7

8 In Re

9
10 MANDATORY PRETRIAL
11 DISCOVERY IN PRO SE PRISONER
12 42 U.S.C. § 1983 CASES
13

GENERAL ORDER NO. 09-16
14

15
16 The United States District Court for the Western District of Washington (the Court) shall
17 participate in a one-year discovery pilot project, commencing December 1, 2016, in cases filed
18 by pro se prisoners alleging 42 U.S.C. § 1983 claim(s) brought against the Washington
19 Department of Corrections (DOC) or its employees, who are represented by the Washington
20 State Attorney General's Office. Because pro se prisoners are among the least likely litigants to
21 have access to material information required to properly litigate their cases, the Court, through
22 this pilot project, adopts a rule requiring mandatory initial disclosures¹ in these cases. The goal
23 of requiring mandatory initial disclosures is to help resolve pro se prisoner cases by reducing
24
25

26
27 ¹ "Initial disclosure" as used in this rule applies only to the disclosures required herein. The initial disclosures set
28 forth in Rule 26(a)(1)(A)(i)-(iv) of the Federal Rules of Civil Procedure ("Fed. R. Civ. P.") do not apply to cases,
like this one, that are brought by a person in custody without an attorney.

1 expenses associated with discovery disputes and discovery motions. The rule incorporates the
2 ideals that discovery should be proportional to the needs of the case, considering the importance
3 of the issues at stake, the amount in controversy, the parties' relative access to relevant
4 information, the parties' resources, the importance of the discovery in resolving the issues, and
5 whether the burden or expense of the proposed discovery outweighs its likely benefit.
6

7 In consideration of the foregoing, **IT IS HEREBY ORDERED:**

- 8 1. The pilot project shall apply to (1) all prisoners who bring a 42 U.S.C. § 1983 action
9 without counsel, in which the events alleged in the complaint occurred while the
10 plaintiff was in the custody of the DOC, and (2) defendants are represented by the
11 Office of the Washington State Attorney General.
12
13 2. The requirements of this rule shall be set forth by the Court in a pretrial scheduling
14 order, which shall be issued in the case only after the case has survived 28 U.S.C. §
15 1915 screening and any Fed. R. Civ. P. 12(b)(6) motions to dismiss.
16
17 3. The terms of the pretrial scheduling order as to the discovery are set forth as follows:

18 **A. Initial Disclosure of Documents and Other Materials:**

19 Within sixty (60) days after the Court has issued the order directing
20 service of the complaint:

21 1. Plaintiff(s) shall produce to defendant(s) copies of all documents
22 and other materials in plaintiff(s)'s care, custody, or control, which are related
23 to and support plaintiff(s)'s claims in the complaint. Plaintiff(s) shall also
produce:

24 a. Correspondence, grievances, grievance appeals, and other
25 documents related to requests for administrative remedies or the inability or
failure to exhaust such remedies; and

26 b. Complaints and petitions filed by plaintiff(s) in any other
27 cases in any court relating to the same issues raised in the complaint in this
28 action or, if such documents are not within the possession of plaintiff(s),
plaintiff(s) shall provide to counsel for defendants a list of each such case,

1 state the court in which each case is filed, and include each case's caption,
2 number, and disposition.

3 2. Defendant(s) shall produce to plaintiff(s) copies of all documents
4 and other materials in the care, custody, or control of any defendant or the
5 DOC related to the claims or defenses in the case. Where applicable, the
6 documents and materials shall include those described in Attachment A
7 hereto. In the cases listed in Attachment A, production of the documents and
8 materials described shall not constitute presumptive compliance with this
9 Order.

10 If a party requires initial disclosures before the 60
11 day deadline, the party shall file a motion to obtain initial disclosures on an
12 expedited basis. The motion must identify the nature and relevance of the
13 documents and materials sought and explain why expedited disclosure is
14 required.

15 3. **Basis for Initial Disclosures.** A party must make these initial
16 disclosures based on the information then reasonably available to it. A lack of
17 investigation of the case or insufficiency of the other party's disclosures is not
18 an excuse from making these required disclosures. Fed. R. Civ. P.
19 26(a)(1)(E).

20 4. **Notice of Compliance.** Plaintiff(s) and defendant(s) shall certify
21 that they have completed the production mandated in Paragraphs A(1) and (2)
22 above by filing a notice of compliance with the Court and serving a copy on
23 the opposing party.

24 5. **Continuing Duty.** Plaintiff(s) and defendant(s) are reminded that
25 they have a continuing duty to disclose to opposing parties any documents and
26 information within the scope of this Order which are discovered or obtained
27 after any initial disclosures under this Order are made. Fed. R. Civ. P. 26(e).

28 6. **Protective Order.** If any document, or any portion thereof,
otherwise required to be disclosed is withheld for any reason defense counsel
shall (a) obtain a complete copy of any such document and retain the
document in counsel's office until the conclusion of litigation, and (b) serve a
log in conformity with Fed. R. Civ. P. 26(b)(5) identifying any withheld
document and the grounds upon which it has been withheld. If any withheld
document is not subject to the attorney-client or work-product privileges, then
defendant(s) shall promptly move for a protective order within 30 days of
producing the initial disclosures. If defendant(s) fail to move for a protective
order within 30 days of producing the initial disclosures, the document(s) shall
be deemed discoverable and must be promptly disclosed to plaintiff(s).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

7. Discovery Demands. Any discovery request to be served on a party, such as an interrogatory, request for admission, or request for production, may not be served until 20 days after the party receives the opposing party's initial disclosures. If any discovery request is served prior to that time, the receiving party need not answer the discovery request because the serving party is to review the received initial disclosures before serving discovery requests to ensure the discovery request is not seeking documents or materials already provided.

A party (or attorney) must sign every discovery request, response, or objection. By signing, the person certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry that he has complied with Federal Rule of Civil Procedure 26(g)(1).

8. Motions to Compel Discovery. Before filing a discovery motion, the parties must confer and attempt to resolve their differences. If unable to resolve their differences, the party filing the discovery motion must, either within the motion to compel or in a separate affidavit attached to the motion to compel, list the date, manner, and participants to the conference. If the moving party fails to include such a certification, the court may deny the motion without addressing the merits of the dispute. See Fed. R. Civ. P. 37 and LCR 37(a)(1).

The motion to compel must: (1) list the matters on which the parties were unable to agree; (2) identify the nature and relevance of the documents and materials sought; (3) list the reason(s) why the mandatory initial disclosures were inadequate, and (4) explain why the discovery sought is proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

9. Filing Discovery. The parties shall not file discovery with the Court except those portions necessary to support a motion or objection.

10. Cooperation. The Court directs the attorneys and parties appearing pro se to cooperate with each other to reasonably limit discovery requests, to facilitate the exchange of discoverable information, and to reduce the costs of discovery.

B. Copies.

Plaintiff(s) and defendant(s) shall send the documents and materials identified in paragraphs I.(A)(1) and I.(A)(2) above to the opposing party by mail within the time specified in this Order. If plaintiff does not have the

1 funds required to make his/her required disclosures, plaintiff shall provide the
2 opposing party with a list of the documents in his/her possession. If the total
3 number of copies being produced by any party exceeds 50, the producing
4 party may make such documents available to the discovering party for
5 inspection upon reasonable notice. If, after such inspection, the discovering
6 party wishes to obtain copies of any such documents, copies of the first 50
7 pages requested shall be provided at the expense of the producing party. Any
8 pages in excess of 50 shall be produced only upon the prepayment by the
9 discovering party of the costs of reproduction at the rate of \$.10 per page.
10 Copies may be double-sided to reduce costs.

11 **C. Medical and Mental Health Records.**

12 If the documents which defendant(s) are required to produce in paragraph
13 I(A)(2) above include a plaintiff(s)'s "protected health information" within the
14 scope of the Federal Health Insurance Portability and Accountability Act of
15 1996, Pub. L. 104-191 ("HIPAA") and 45 C.F.R. §§ 160.103 and
16 154.512(e)(1), the custodians of such medical records are hereby authorized to
17 release "protected health information" and "protected mental health
18 information" without an authorization from plaintiff(s) for the purpose of
19 providing copies to plaintiff(s). Defendant(s) may use such documents in the
20 defense of this action. The parties are referred to the Court's local civil rules
21 governing the sealing and redacting of court records. See LCR 5(g).

22 **ATTACHMENT A**

23 The discovery ordered in paragraph I(A)(2) of the Mandatory Discovery
24 and Pretrial Scheduling Order shall in all cases include reports of completed
25 investigations by a defendant's employer such as the DOC or others relevant
26 to the incident(s) alleged in the complaint. In addition, the following
27 documents and materials relevant to the incident(s) alleged in the complaint
28 shall be produced for the following types of claims:

1. **Excessive Force and Failure to Protect.** Photographs, incident
reports, use-of-force reports, staff and inmate disciplinary charges, records
(including transcripts) of staff and inmate disciplinary hearings,
determinations of staff and inmate disciplinary charges and appeals,
videotapes and/or audiotapes, and medical records concerning treatment for
any injuries allegedly received by the plaintiff as a result of the incident(s)
alleged in the complaint.

Copies of videotapes and audiotapes need not be provided to plaintiff(s) as
long as defendant(s) provide plaintiff(s) with reasonable opportunities to
review a videotape or audiotape and the videotape or audiotape is preserved
by defense counsel for use by any party throughout the case.

1 Pursuant to paragraph I(C) of this Order, the DOC and its employees,
2 agents, and representatives are hereby authorized to release a plaintiff's
3 medical records to plaintiff without additional authorization from the plaintiff.

4 **2. Due Process and First Amendment/Retaliation.** Relevant staff
5 and inmate disciplinary charges, records (including transcripts and audiotapes)
6 of relevant disciplinary hearings, and determinations of disciplinary charges
7 and appeals. See Paragraph 1 above regarding production of audio tapes.

8 **3. Medical Indifference.** Medical records and documents related to
9 the condition(s) alleged in the complaint or attempts to seek treatment for the
10 condition(s). See Paragraph 1 above regarding production of medical records.

11 **4. Conditions of Confinement.** Documents and records regarding
12 the condition(s) alleged in the complaint.

13 **IT IS FURTHER ORDERED** that this Standing Order shall become effective
14 December 1, 2016, and shall remain in effect through November 30, 2017, subject to extension
15 upon the agreement of the parties. Before November, 2017, the Court will evaluate the pilot
16 project and determine whether it should be continued, terminated, modified, or expanded.

17 **IT IS SO ORDERED.**

18 **DATED** this 31st day of October, 2016.

19
20
21 
22 RICARDO S. MARTINEZ
23 CHIEF UNITED STATES DISTRICT JUDGE
24
25
26
27
28