

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ROBERT WILLIAMS, *et al.*,

Plaintiffs,

v.

MIKE JOHANNNS, *et al.*,

Defendants.

Civil Action No. 03-2245 (CKK)

MEMORANDUM OPINION

(August 16, 2007)

Presently before the Court is [148] “Plaintiffs’ Amended Motion for Enlargement of Time to File Plaintiffs’ Objections to Magistrate’s Recommendations and Motions to Seal and Recusal of the Honorable Magistrate Judge John M. Facciola and Request for Expedited Ruling,” filed on August 12, 2007. Plaintiffs filed a related Notice thereto on August 15, 2007. After considering Plaintiffs’ Motion, the Court shall GRANT [148] “Plaintiffs’ Amended Motion for Enlargement of Time to File Plaintiffs’ Objections to Magistrate’s Recommendations and Motions to Seal and Recusal of the Honorable Magistrate Judge John M. Facciola and Request for Expedited Ruling.” Accordingly, Plaintiffs shall file any Objections to Magistrate Judge John M. Facciola’s [140] Order and accompanying [141] Memorandum Opinion by September 28, 2007; any Opposition from Defendants shall be filed by October 19, 2007; and any Reply shall be filed by November 2, 2007. Plaintiffs shall file any motion to seal (with accompanying motion for recusal attached) no later than October 4, 2007; any Opposition from Defendants shall be filed by October 18, 2007; and any Reply shall be filed by October 25, 2007. No additional extensions shall be granted.

I. BACKGROUND

Magistrate Judge Facciola issued an [140] Order and accompanying [141] Memorandum Opinion on July 26, 2007, denying as moot [100] “Plaintiffs’ Motion for Reconsideration of Imposition of Sanctions Against Plaintiffs and Counsel for Failure to Respond to Discovery;” denying [101] “Plaintiffs’ Amended Motion for Reconsideration of Imposition of Sanctions Against Plaintiffs and Counsel for Failure to Respond to Discovery,” granting with respect to a request for expedited ruling and otherwise denying [112] “Plaintiffs’ Motion for Leave to File Witness List and Respectful Request for Expedited Ruling,” granting with respect to a request for expedited ruling and otherwise denying [120] “Plaintiffs’ Amended Motion for Leave to File Witness List and Respectful Request for Expedited Ruling,” ordering Plaintiffs’ counsel to pay Defendants the cost of bringing their motions to compel in the total amount of \$4,109.79 no later than August 10, 2007, and ordering that the Parties file a joint status report no later than August 3, 2007.

A [143] Joint Status Report was filed in this case on August 3, 2007, including the following statements: (1) “The plaintiffs intend to file an appeal of the Court’s order of July 26, 2007 and all matters and orders delineated therein and plaintiffs hereby seek a scheduling order regarding this request. Defendants oppose this[,]” [143] Jt. Status Rep. ¶ 9; and (2) “Plaintiffs intend to file a motion of recusal of the honorable Magistrate Judge Facciola and hereby request approval of the district judge to file such motion under seal due to the sensitive nature of the proposed motion for recusal and seek a scheduling order regarding this request. Defendants oppose this.” [143] Jt. Status Rep. ¶ 10. No briefing schedule was proposed to the Court in the Joint Status Report.

Accordingly, on August 6, 2007, this Court issued an Order indicating that any objections to Magistrate Judge Facciola's July 26, 2007 ruling must be filed by Plaintiffs by August 14, 2007, and that any objections filed after this date would not be considered by the instant Court. [144] Order at 2. In the Court's [144] Order, the Court brought Plaintiffs' Counsel's attention to Local Civil Rule 72.2(b), which was not referenced in the [143] Joint Status Report, which states that "[a]ny party may file written objections to a magistrate judge's ruling under paragraph (a) within 10 days after being served with the order of the magistrate judge, unless a different time is prescribed by the magistrate judge or the district judge." LCvR 72.2(b). The Court also ordered that any motion to seal by Plaintiffs (with accompanying motion for recusal attached) shall be filed no later than August 20, 2007; any Opposition from Defendants shall be filed by September 4, 2007; and any Reply shall be filed by September 10, 2007. [145] Order at 2-3. While Plaintiffs' Counsel suggests that this Court via its [144] Order "quite disturbingly" made a "pre-determination in anticipation of the Plaintiffs' [*sic*] seeking an enlargement of time," Pls.' Am. Mot. ¶ 5, the Court merely pointed Plaintiffs' Counsel to his obligations under Local Rule 72.2(b), which were not addressed in Plaintiffs' request for a "scheduling order" in which Plaintiffs' Counsel did not propose any suggested dates.

On August 11, 2007, Plaintiffs filed [147] "Plaintiffs' Motion for Enlargement of Time to File Plaintiffs [*sic*] Objections to Magistrate Recommendations and Motions to Seal and Recusal of the Honorable Magistrate Judge John M. Facciola and Request for Expedited Ruling." On August 12, 2007, amending Plaintiffs' August 11, 2007 Motion, Plaintiffs' Counsel filed [148] "Plaintiffs' Amended Motion for Enlargement of Time to File Plaintiffs' Objections to Magistrate's Recommendations and Motions to Seal and Recusal of the Honorable Magistrate

Judge John M. Facciola and Request for Expedited Ruling,” which is presently before the Court. Plaintiffs’ Counsel asks for a thirty-day enlargement of time to file Plaintiffs’ Objections to Magistrate Judge Facciola’s [140] Order and accompanying [141] Memorandum Opinion, and a thirty-day enlargement of time to file Plaintiffs’ Motion to Seal with an attached motion for recusal. Pls.’ Am. Mot. ¶ 1. The proposed order attached to Plaintiffs’ Amended Motion for Enlargement of Time sets out a briefing schedule requiring that Plaintiffs file their Objections on September 11, 2007, with any opposition from Defendants to be filed on September 26, 2007, and any reply to be filed by October 2, 2007. The attached proposed order also sets out a briefing schedule requiring that Plaintiffs file their motion to seal with any recusal motion attached by September 20, 2007.

II. DISCUSSION

Plaintiffs’ Amended Motion for Enlargement of Time is filed pursuant to Federal Rule of Civil Procedure 6(b): “When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order” Fed. R. Civ. P. 6(b). Plaintiffs’ Amended Motion was filed prior to the August 14, 2007 deadline delineated by Local Civil Rule 72.2(b), such that the standard set forth in Federal Rule of Civil Procedure 6(b)(1) shall be applied by the Court.

In Plaintiffs’ Amended Motion for Enlargement of Time, Plaintiffs’ Counsel cites the following reasons for his request for a thirty-day extension with respect to the deadlines set forth in this Court’s [144] [145] Orders: (1) the number of issues addressed and findings made in

Magistrate Judge Facciola's Order and Memorandum Opinion; and (2) Plaintiffs' Counsel's workload and schedule. However, in Plaintiffs' later-filed [149] Notice,¹ filed on August 15, 2007, Plaintiffs' Counsel states that he ordered transcripts on August 15, 2007 through Pro-Typist, and that Plaintiffs' Counsel was informed that it would take "thirty (30) days from the date that Pro-Typist received the CD before the transcripts would be delivered to counsel's office in San Antonio, Texas." Pls.' Notice ¶¶ 2, 3. While Plaintiffs' Notice does not propose a further extension of time beyond that included in the proposed order attached to the Amended Motion for Enlargement of Time, the Court notes that the information relayed in Plaintiffs' Notice about the thirty-day delivery time implies that at very least the filing date of September 11, 2007 included in Plaintiffs' own proposed order would not give Plaintiffs sufficient time to add any details from the ordered transcripts to Plaintiffs' Objections.

The Court notes that Magistrate Judge Facciola's Order and Memorandum Opinion were issued on July 26, 2007, yet Plaintiffs' Counsel did not order the transcripts he deems necessary to file Objections until August 15, 2007, despite his initial obligation under the Local Rules to file Objections by August 14, 2007. Indeed, Plaintiffs' Counsel stated in his Amended Motion for Enlargement of Time that transcripts would be ordered "on the next business day" after the filing of that motion, which would have been August 13, 2007, not August 15, 2007. *See* Pls.' Am. Mot. ¶ 19. All of the transcripts cited in the [141] Memorandum Opinion in question have already been created. Furthermore, said transcripts are and have been available for Plaintiffs' Counsel to review in the Clerk's Office or to order transcripts as of November 4, 2005,

¹ The Court notes that after Plaintiffs' Counsel's signature line and Certificate of Service, Plaintiffs' Counsel seems to have erroneously attached part of an older motion unrelated to the pending issues. *See* Pls.' [149] Notice at 4-6.

December 22, 2006, February 27, 2007, April 9, 2007, July 20, 2007, and August 2, 2007, respectively. *See* dkt. entries [49], [90], [105], [108], [138], [139], and [142]; *see also* [150] Memorandum at 1-2. The Court points out that while in Washington D.C. between August 20, 2007 and August 24, 2007, *see* Pls.' Am. Mot. ¶ 23, Plaintiffs' Counsel may make a copy in the Office of the Clerk of this Court of the transcript of the Initial Scheduling Conference held before this Court on July 20, 2005, as transcripts of proceedings where a court reporter has retired may be copied in the Clerk's Office.

In presently applying Federal Rule of Civil Procedure 6(b)(1) to Plaintiffs' Amended Motion for Enlargement of Time, the Court shall GRANT Plaintiffs' request for additional time to file both Plaintiffs' Objections and any motion to seal (with recusal motion attached) based on the length of the [141] Memorandum Opinion and attached Appendix, which are the focus of any of Plaintiffs' forthcoming Objections, and to a lesser degree, on the thirty days for standard delivery of the transcripts Plaintiffs' Counsel requested as of August 15, 2007.

In light of the thirty days required for standard delivery of the transcripts to Plaintiffs' Counsel, the Court shall grant Plaintiffs' Counsel's request for an extension such that (1) Plaintiffs' Objections to Magistrate Judge Facciola's [140] Order and [141] Memorandum Opinion shall be filed by Plaintiffs by September 28, 2007, any Opposition shall be filed by Defendants by October 19, 2007, and any Reply shall be filed by November 2, 2007; and (2) any motion to seal by Plaintiffs (with accompanying motion for recusal attached)² shall be filed no later than October 4, 2007, any Opposition from Defendants shall be filed by October 18, 2007,

² *See Johnson v. Greater Southeast Community Hosp. Corp.*, 951 F.2d 1268, 1277 n.14 (D.C. Cir. 1991).

and any Reply shall be filed by October 25, 2007. The Court notes that this briefing schedule is in fact more generous than that proposed by Plaintiffs themselves in the proposed order attached to their Amended Motion for Enlargement of Time, allowing more than ample time for Plaintiffs' Counsel to initially prepare any Objections and/or motion to seal and to later add any further detail from the transcripts. The Court further notes that the filing dates set for Plaintiffs' Objections and any motion to seal are respectively 65 days and 71 days after Magistrate Judge Facciola issued his Order and Memorandum Opinion.

Finally, Plaintiffs' Counsel indicates that "[t]his is the first and last request for time enlargement on the issues before the Court." Pls.' Am. Mot. ¶ 27. The Court shall not grant any further extensions of time to Plaintiffs to file their Objections or any motion to seal, particularly in light of this generous extension.

III. CONCLUSION

Based on the aforementioned reasoning, the Court shall DENY AS MOOT [147] "Plaintiffs' Motion for Enlargement of Time to File Plaintiffs [*sic*] Objections to Magistrate Recommendations and Motions to Seal and Recusal of the Honorable Magistrate Judge John M. Facciola and Request for Expedited Ruling," and GRANT [148] "Plaintiffs' Amended Motion for Enlargement of Time to File Plaintiffs' Objections to Magistrate's Recommendations and Motions to Seal and Recusal of the Honorable Magistrate Judge John M. Facciola and Request for Expedited Ruling." Accordingly, Plaintiffs shall file any Objections to Magistrate Judge Facciola's [140] Order and accompanying [141] Memorandum Opinion by September 28, 2007; any Opposition from Defendants shall be filed by October 19, 2007; and any Reply shall be filed by November 2, 2007. Any motion to seal by Plaintiffs (with accompanying motion for recusal

attached) shall be filed no later than October 4, 2007; any Opposition from Defendants shall be filed by October 18, 2007; and any Reply shall be filed by October 25, 2007. No additional extensions shall be granted. An Order accompanies this Memorandum Opinion.

Date: August 16, 2007

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge