

MARICOPA COUNTY
OFFICE OF GENERAL LITIGATION SERVICES

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Attorney for Maricopa County

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Brian A. Wilkins

Plaintiff,

v.

Maricopa County,

Defendants.

NO. CV09-01380-PHX-LOA

**MARICOPA COUNTY'S RESPONSE
TO PLAINTIFF'S MOTION FOR
SANCTIONS**

Honorable Lawrence O. Anderson

Maricopa County hereby Responds in opposition to Plaintiff's Motion for Sanctions.

Plaintiff has no basis in fact, or in law, for his Motion For Sanctions. The arguments raised in Plaintiff's Motion will be addressed in turn.

1. Defendant's efforts to obtain Plaintiff's medical records. As the Court is well aware, Plaintiff has put his medical condition at issue in this case by suing Maricopa County regarding two medical issues - treatment of his hand, and

1 providing him with blood pressure medication. As the parties advised the Court
2 at the time of their scheduling conference, Plaintiff was refusing to provide
3 Defendant Maricopa County with authorizations for the release of his medical
4 records. The Court instructed Plaintiff to sign the authorizations, and further
5 warned the Plaintiff that his medical claims were subject to dismissal if he did not
6 sign the authorizations. Based upon some unknown reason, Plaintiff continues
7 to assert that Maricopa County is violating his privacy rights and is seeking his
8 lifetime of 35 years of medical records. Counsel for the County has not
9 requested a lifetime of medical records and has neither the need nor desire to
10 review healthcare records accumulated over the course of Plaintiff's lifetime. As
11 set forth in the County's Motion to Compel and its Reply thereto, Plaintiff has
12 altered the authorizations prepared by defense counsel and has materially
13 interfered with the County's ability to conduct discovery in this case. Plaintiff's
14 notation in his Motion that he has warned defense counsel of his intention to
15 remedy counsel's "vexatious activities" is absurd on so many levels that it will not
16 be dignified with further comments. It is indeed Plaintiff who should be
17 sanctioned for filing this baseless motion and obstructing discovery.
18

19 2. Disclosure of Correctional Health Services records. Plaintiff and
20 Maricopa County exchanged Initial Disclosure Statements on February 26, 2010,
21 as per the parties' agreement and their stipulation in the Joint Case Management
22 plan. Copies of Maricopa County's Disclosure Statement and the email
23 transmittal of same to Plaintiff are attached as Exhibit A. As the Court will note,
24 the Correctional Health Services records, with attached Bates numbering, were
25 identified as exhibits to the Initial Disclosure Statement. Approximately 21 days
26 later, on March 19, 2010, defense counsel could not determine from her email
27 letter transmitting the Disclosure Statement to Plaintiff whether or not copies of
28 the identified/disclosed medical records had been included with the Initial

1 Disclosure Statement. Therefore, out of an abundance of caution, and in an
2 effort to be sure that Plaintiff had properly received all disclosed documents,
3 counsel sent Plaintiff another copy of the Correction Health Services
4 medical records by email on March 19, 2010. A copy of the email transmittal
5 letter is attached as Exhibit B. The transmittal letter clearly states that another
6 copy was being provided because it was unclear whether the records had been
7 sent with the Initial Disclosure Statement. At no time in the 21 days between the
8 time the Initial Disclosure Statement was sent to Plaintiff and the date on which
9 the Correctional Health Services records were provided to him either for the first
10 or second time, did Plaintiff ever contact defense counsel and inquire about the
11 records or report that the records had not been appended to the Initial Disclosure
12 Statement. Although Plaintiff claims that he sent Requests for Admissions to
13 Maricopa County because he presumed that there were no records to be had,
14 the County's Initial Disclosure Statement clearly identified the medical records as
15 exhibits and named Correctional Health Services personnel as witnesses whose
16 anticipated testimony included speaking to their entries in the records. Yet
17 Plaintiff made no inquiry regarding the whereabouts of the records identified in
18 the County's Initial Disclosure Statement. If the medical records weren't
19 appended to the Initial Disclosure Statement, that was obviously the result of a
20 clerical oversight. Counsel for Correctional Health Services is not a fool; failure
21 to disclose the records would preclude them from being used as exhibits in this
22 case. Thus, they were disclosed as soon as the possible oversight was
23 discovered. For Plaintiff to fail to inquire about the records and then accuse
24 defense counsel of improper behavior worthy of sanctions is ridiculous.

26 Plaintiff's Motion further claims that Correctional Health Services obtained
27 his records "illegally" from Banner and Walgreens. Such an assertion is without
28 merit, at best. First of all, Plaintiff signed consents at the time he was booked

1 into jail to allow Correctional Health Services personnel to obtain these records.
2 Copies of the consents are attached as Exhibit C. Second, even if the records
3 were obtained without authorization, Plaintiff should take the issue up with
4 Banner and Walgreens. The County did nothing improper. Although Plaintiff
5 came to the parties' scheduling conference with some sort of statement from
6 Walgreens and Banner indicating that they had not released any records to
7 Maricopa County, those statements are obviously inaccurate. The County has
8 no idea to whom Plaintiff sent his request for verification of whether or not
9 records had been disclosed to the County. If Plaintiff directed his request to
10 Banner and Walgreens corporate headquarters, it is no wonder that there was
11 nothing on file indicating that these entities had responded to the County's
12 request for records. That is an issue for Plaintiff to address with the disclosing
13 entities. There was nothing improper about the manner in which the County
14 obtained Plaintiff's records from Banner and Walgreens at the time he was
15 booked into jail.
16

17 Plaintiff's claim that he should have received his Correctional Health
18 Services medical records before the parties' scheduling conference is also
19 without merit. The parties agreed on a date for exchange of Disclosure
20 Statements. If Plaintiff wanted Correctional Health Services medical records
21 sooner, he need only have asked, or insisted on an earlier exchange of
22 disclosures.

23 Plaintiff's claim that his ability to file an Amended Complaint was
24 hampered because he didn't have the Correctional Health Services records at
25 the time of the scheduling conference is yet another meritless argument. Plaintiff
26 stated at the scheduling conference that he wanted to amend his Complaint to
27 allege a "failure to train" theory of liability. Plaintiff was permitted to do so and his
28 Second Amended Complaint has been filed and answered. Plaintiff has not

1 sought to amend his Complaint to make some allegation based upon the
2 contents of the Correctional Health Services records. Thus, the County cannot
3 figure out why Plaintiff is complaining that his ability to amend his Complaint was
4 somehow impeded.

5 3. Irrelevant/vexatious discovery requests. The County does not know to
6 what Plaintiff is referring. The County has submitted one set of 19 interrogatories
7 to Plaintiff on March 23, 2010. The interrogatories, a copy of which are attached
8 as Exhibit D, are virtually standard interrogatories derived from State Court
9 Uniform Interrogatories. Plaintiff has neither answered nor objected to a single
10 one of the interrogatories. He has no basis to complain at this time.

11 4. Hearings regarding depositions. As the Court is aware based upon
12 Maricopa County's objections to the depositions of Rodney Smith and Jay Raoofi
13 filed by Maricopa County on April 7, 2010 (Doc # 90), Plaintiff unilaterally
14 scheduled depositions of his own witnesses in this matter and told defense
15 counsel that he would not reschedule them despite the fact that they were set for
16 date when counsel for Maricopa County was out of the country. Attached as
17 Exhibit E is a copy of Plaintiff's email to defense counsel in which he stated that
18 he would not move the depositions unless the Defendants paid for a court
19 reporter. Counsel would be derelict in her duties if she allowed the depositions to
20 proceed without her presence. The deposition date was not agreeable with
21 counsel for Sheriff Arpaio, either. In light of Plaintiff's unwarranted refusal to
22 confer with defense Counsel before setting depositions, and his unprecedented
23 refusal to extend the Courtesy of rescheduling the depositions to a date when
24 defense counsel was available, the County had no choice but to seek
25 intervention from the Court. After the County filed its objection to the depositions
26 and the Court scheduled the matter for a hearing, Plaintiff apparently conferred
27 with counsel for Defendant Arpaio, and it was at that time that the depositions
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1 were re-set to dates that were agreed upon by all parties.¹ Copies of emails
2 regarding the agreement to re-set the depositions are attached as Exhibit F.
3 Accordingly, counsel for Maricopa County requested that her staff vacate the
4 hearing the Court had scheduled. The Court obviously had enough concern
5 about Plaintiff's tactics that it would not vacate the hearing on the objections until
6 Plaintiff notified the Court regarding what agreement had been reached regarding
7 the use of a court reporter at the depositions. When the Court was apprised of
8 the parties' agreement, the hearing was vacated.

9
10 There was nothing improper on the part of defense counsel in bringing this
11 matter to the Court's attention, and Plaintiff is merely complaining to the Court
12 either because he is unfamiliar with the courtesies customarily extended among
13 litigants or, more likely, because he has developed a personal dislike for defense
14 counsel; *See infra*.

15 Finally, Plaintiff's request to have the County pay for a Court reporter
16 because of his inconvenience and expense is unwarranted. Nothing the County
17 did has anything to do with Plaintiff having to reschedule the depositions. From
18 the very beginning, Plaintiff complained about not having the funds to finance this
19 litigation or pay for court reporters. Perhaps Plaintiff has woven this Motion for
20 Sanctions from whole cloth as a way of getting a free court reporter? It is
21 obvious that Plaintiff is inexperienced with litigation and misunderstands his
22 obligations as a litigant as well as the obligations of counsel to act in the best
23 interests of their clients. Counsel for the County comes before this Court with
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25
26 ¹ Despite the fact that counsel for all Defendants held their calendars open
27 for the newly agreed deposition date, Plaintiff never re-noticed the depositions.
28 The depositions were canceled because counsel for Arpaio had another matter
set for April 26, 2010 and could not hold her calendar open any longer. So much
for Plaintiff's argument about *his* inconvenience.

1 clean hands and a clear conscience, having done absolutely nothing
2 inappropriate in this case.

3 5. Frivolous motions. Plaintiff's last attempt to have the Court sanction
4 the County is his allegation of "vexatious tactics" with regard to the pending
5 Motion to Compel Medical Authorizations. That Motion, filed by associate
6 counsel while undersigned counsel was out of the country between April 1 and
7 April 15, 2010, has been fully briefed and will not be re-argued herein. Plaintiff
8 fails to understand the cooperative nature of a law practice and assigns some
9 sinister motive and untruthful conduct to defense counsel in seeking the
10 assistance of her professional colleagues to cover her docket while she was out
11 of the country. At the time of the parties' Scheduling Conference, the Court
12 urged Plaintiff to retain counsel but he refused to do so; perhaps if he had done
13 so he would understand that nothing untoward has happened in this case and
14 that his own paranoia has overwhelmed his ability to prepare his case.
15

16 As indicated above, it appears that Plaintiff's Motion may be premised
17 upon some personal animosity he has developed toward counsel for Maricopa
18 County. This attitude can best be revealed to the Court by Exhibit G attached
19 hereto which is an excerpt from the blog Plaintiff has created and on which he
20 makes daily postings. Following the parties' scheduling conference, Plaintiff
21 posted a particularly distasteful and misogynistic note in which he stated that
22 counsel for Maricopa County "needs to get laid" and that the only thing counsel
23 has going for her is her "cute as hell paralegal." Of further significant concern in
24 that posting is Plaintiff's accusation of judicial misconduct: "She seems to have
25 Judge Anderson in her hip pocket which will make for some interesting times
26 ahead." While it is unclear that the Plaintiff can be reprimanded for exercising his
27 First Amendment rights, however vulgar and foul his expressions might be, the
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1 blog posting surely reveals Plaintiff's animosity toward counsel and the Court and
2 places his motivation for filing this motion squarely in front of the Court.

3 Based upon the foregoing, Maricopa County requests that the Plaintiff's
4 Motion for Sanctions be denied. The County further requests that the Court
5 order Plaintiff to notify the Court and counsel at least 10 days before he
6 anticipates filing any other motions so that the Court can determine whether
7 there is a meritorious basis for the relief Plaintiff seeks.

8
9 RESPECTFULLY SUBMITTED this 28th day of April 2010.

10
11 OFFICE OF GENERAL LITIGATION SERVICES

12 BY: /s/Sherle R. Flaggman
13 SHERLE R. FLAGGMAN
14 Attorney for Maricopa County

15
16
17 ORIGINAL of the foregoing E-FILED
18 and COURTESY COPIES mailed this
19 28th day of April 2010, to:

20 Honorable Lawrence O. Anderson
21 United States Magistrate Judge
22 UNITED STATES DISTRICT COURT
23 Sandra Day O'Connor U.S. Courthouse
24 401 W. Washington Street Ste. 322, SPC11
25 Phoenix, Arizona 85003

26 and COPIES mailed to:

27 Brian A. Wilkins
28 Pro-Se Litigant
P.O. BOX 50854
Phoenix, Arizona 85076

1 S. Lee White
2 Assistant Litigation Counsel
3 Maricopa County
4 Office of Special Litigation Services
5 234 N. Central Avenue, Suite 4400
6 Phoenix, Arizona 85004

7 /s/ V. Carbajal

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