

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 T.R., P.R., and K.W., on behalf of)
 themselves and others similarly situated;)
 and Protection and Advocacy for People)
 with Disabilities, Inc.,)
)
 Plaintiffs,)
)
 v.)
)
 State of South Carolina; South Carolina)
 Department of Corrections; and Jon)
 Ozmint, as Director of the South Carolina)
 Department of Corrections,)
)
 Defendants.)

IN THE FIFTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2005-CP-40-02925

JEANETTE M. McBRIDE
 C.C.P. & G.S.
 2009 MAY -7 PM 3:00

FILED

**ORDER RESOLVING
 CERTAIN DISCOVERY
 DISPUTES**

Plaintiffs have brought this class action alleging that the treatment provided by Defendants to seriously mentally ill inmates falls below Constitutional standards. Plaintiffs have moved to compel Defendant South Carolina Department of Corrections ("SCDC" or "the Department") to respond to numerous interrogatories and requests for production and SCDC has moved for a protective order regarding testimony of Melvin Ransom related to a Suicide Prevention Committee meeting in which he participated. At the hearing held January 5, 2009, SCDC produced new responses to several of the requests at issue. Rather than rule on all the requests at issue, the Court has directed Plaintiffs to review SCDC's new responses served at the hearing, then notify the Court whether they feel these responses are sufficient, after which the Court will decide whether another hearing is warranted¹. Moreover, the Court has conducted additional discovery telephone conferences with all counsel on March 20 and April 23, 2009,

¹ In an e-mail dated January 9, 2009, Plaintiffs' counsel subsequently notified the Court that Plaintiffs consider SCDC's responses insufficient.

during which these matters were further discussed. A final, dispositive telephone conference was conducted on the Lee/Lieber discovery dispute on April 30, 2009.

The Court will now address three broad discovery issues raised by the Plaintiffs. After hearing arguments on these issues from both Plaintiffs and SCDC², the Court rules as follows:

1. E-Mails and CRT Messages

Plaintiffs argue that SCDC should be required to produce e-mails and CRT messages related to the case. The CRT system is a statewide teletype communications system used by the institutions and employees of SCDC for intra-agency messaging. It is not readily searchable by key word inquiry. The Court finds that producing CRT messages would be costly, problematic, and unduly burdensome for SCDC. While producing the requested e-mails could be done more easily, the Court finds that such production would have a chilling effect on SCDC's day to day operations, which outweighs the potential relevance such e-mails would have. Therefore, this aspect of Plaintiffs' motion is denied.

2. Lee/Lieber Discovery

On grounds of undue burden, SCDC has objected to all of Plaintiffs' Eighth, Ninth, and Tenth Interrogatories and Requests for Production pertaining to Lee and Lieber Correctional Institutions. SCDC argues that Plaintiffs should not be allowed to serve written discovery concerning an institution after conducting an inspection of that institution. Plaintiffs, however, contend that post-inspection written discovery is reasonable and necessary to further investigate facts discovered during an inspection of an institution.

As an initial matter, the Court notes that Plaintiffs' Eights Interrogatories and Requests for Production were served July 2, 2008 and the Ninth Interrogatories and Requests for

² The contested discovery did not directly involve Defendant State of South Carolina, which therefore did not participate in the hearing.

Production were served July 21, 2008. The Lee and Lieber inspections did not take place until September 21-24, 2008. Therefore, the Court directs SCDC to fully respond to Plaintiffs' Eighth and Ninth Interrogatories and Requests for Production within twenty days of the receipt of this Order; however, because continuing disagreements remain between counsel as to the scope and extent of the discovery questions, this Court will issue a separate Order specifically addressing this matter.

Plaintiffs' Tenth Interrogatories and Requests for Production were served on October 1, 2008, after the Lee and Lieber inspections. The Court agrees with Plaintiffs that some post-inspection written discovery is appropriate. However, given the scope of this case and the amount of discovery that remains to be completed, the Court will limit Plaintiffs as follows. Plaintiffs will identify a total of ten discovery requests (interrogatories and requests for production) pertaining to Lee and Lieber from the Tenth Interrogatories and Requests for Production. The Court directs SCDC to respond fully to the ten identified discovery requests within twenty days of the receipt of this Order or the specific designations of Plaintiffs, whichever occurs later. In the future, Plaintiffs will be similarly limited to serving a total of ten discovery requests pertaining to a particular institution following the inspection of that institution, except by leave of Court.

3. Suicide Prevention Committee Discovery

The Plaintiffs and Defendants each filed motions relating to certain reports and activities of the Department's Suicide Prevention Committee. In its motion for a protective order, the Department asserted that the testimony of SCDC employee Melvin Ransom concerning the deliberations of the Suicide Prevention Committee and Committee reports are protected under and subject to the attorney-client privilege, the work-product doctrine, and the

peer review doctrine. In opposition to the Department's motion, the Plaintiffs filed excerpts from the deposition testimony of SCDC employee John Solomon. As the Department's current director of mental health services, Dr. Solomon serves as chair of the Suicide Prevention Committee and is the author of its reports. Dr. Solomon testified that the purpose of the Committee is "[t]o evaluate – to look at the circumstances surrounding the suicide and see if there's something we might be able to change, or something we can implement that might reduce the potential for suicide in the future." *Solomon Dep'n* at 153:12-16. Moreover, Dr. Solomon denied that it is the Suicide Prevention Committee's responsibility to investigate suicides and conceded that the general function of the Committee was not to obtain legal advice, even though Department attorneys are present for the Committee meetings. *Id.* at 155:16 - 157:2. Counsel for SCDC vehemently opposed Plaintiffs' counsels' access to this information, stating that it would likely lead to the disbanding of the suicide review/prevention committee and preventing the Department's candid evaluation efforts aimed at saving the lives of prisoners vulnerable to suicide. The Court reviewed *in camera* one of the reports in question. After such review, the Court finds that release of the suicide review/prevention committee reports is not appropriate on the basis of the attorney/client privilege, that the information contained within the reports would not be probative or relevant to the issues at Bar, and that such release would seriously jeopardize SCDC's frank self-assessment in the ongoing effort to prevent inmate suicides. Thus, Plaintiff's motion to compel these reports is denied.

IT IS SO ORDERED.



J. Michael Baxley
Presiding Judge, Fourth Judicial Circuit

May 4, 2009
Hartsville, South Carolina