

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Larry Edward Hendricks,

Plaintiff,

v.

South Carolina Department of Mental Health,

Defendant.

Civil Action No. 2014-CP-40-03397

**DEFENDANT'S RESPONSE TO
PLAINTIFF'S MOTION TO
ALTER OR AMEND**

The Defendant, South Carolina Department of Mental Health (“SCDMH”), through its undersigned counsel, submits the following response to the Plaintiff’s Motion to Alter or Amend.

The Plaintiff is a resident of the Sexually Violent Predator Treatment Program (the “SVPTP”), which is administered by the South Carolina Department of Mental Health (“SCDMH”) pursuant to the Sexually Violent Predator Act, S.C. Code Ann. §§ 44-48-10 et seq. The SVPTP is located on the grounds of the Broad River Correctional Institution in Columbia. In his pleadings, the Plaintiff alleges SCDMH is violating various rights purportedly afforded to him pursuant to South Carolina law and the United States Constitution. He filed his initial Complaint on May 23, 2014, alleging violations primarily pertaining to the amount and quality of the food provided to him by SCDMH pursuant to an agreement with the South Carolina Department of Corrections. SCDMH filed its Answer to the Complaint on July 28, 2014. Thereafter, on August 8, 2014, the Plaintiff filed his Reply to Defendant’s Answer and Motion to Strike, in which he challenged various averments in SCDMH’s Answer. On August 25, 2014, the Plaintiff filed a pleading—purported to be an Amended Complaint—adding additional allegations to his Complaint pertaining to SCDMH’s alleged failure to properly accommodate the dietary preferences dictated by his Islamic faith. SCDMH’s Motion to Strike Plaintiff’s

Amended Complaint, filed on September 9, 2014, asserted this pleading was not actually an amendment pursuant to Rule 15(a), SCRCP, but was in the nature of a supplemental pleading pursuant to Rule 15(d), SCRCP, and must be stricken because it was filed without leave. Finally, on September 18, 2014, the Plaintiff filed a Motion for Leave to File Supplemental Complaint questioning whether he may be forced to room with another sexual predator.

All of the aforementioned motions were heard by The Honorable Deadra L. Jefferson on October 14, 2014. At the hearing, the Plaintiff and counsel for SCDMH signed a consent Order directing the Plaintiff to file a Second Amended Complaint within twenty-one (21) days after the entry of the Order. The Order was subsequently entered on December 1, 2014, and thus the Second Amended Complaint was due no later than December 22, 2014. The consent Order directed the Plaintiff to “file a Second Amended Complaint incorporating all of—but no more than—the allegations contained in his Complaint, Amended Complaint, and proposed Supplemental Complaint into a single pleading.” It further ordered that “no further amendments to the Plaintiff’s pleadings will be permitted absent substantial justification.”

Between the October 14, 2014 hearing and the consent Order’s entry, the Plaintiff filed a Motion for a Ruling to Show Cause, in which he alleged that SCDMH retaliated against his filing of this lawsuit by suspending his computer privileges and confiscating several floppy disks used to store his files. Subsequently, on December 29, 2014, one week after the deadline for filing his Second Amended Complaint had passed, the Plaintiff filed a Motion to Stay, in which he requested that the Court stay the time for him to file his Second Amended Complaint until his Motion for a Ruling to Show Cause is decided. That motion was heard by The Honorable DeAndrea G. Benjamin on May 4, 2015, at which time she denied the motion and entered an Order giving the Plaintiff until May 29, 2015 to file his Second Amended Complaint. The Plaintiff subsequently filed his Second Amended Complaint on May 27, 2015. However, it did

not comply with Rule 10(b), SCRCP. Accordingly, SCDMH filed a Motion for More Definite Statement requesting that the Plaintiff be ordered to re-file his Second Amended Complaint in a form that complies with all requirements of the South Carolina Rules of Civil Procedure, specifically Rule 10(b).

The Plaintiff's Motion for a Ruling to Show Cause and SCDMH's Motion for More Definite Statement were heard by The Honorable DeAndrea G. Benjamin on October 15, 2015, at which time Judge Benjamin denied the former motion and granted the latter motion. Thereafter, the Plaintiff filed and served a pleading dated November 5, 2015 and captioned as his "Complaint" even though it is in fact the fourth version of his pleading (referred to hereinafter as the "Third Amended Complaint"). SCDMH served its Answer to the Third Amended Complaint on November 19, 2015.

The Plaintiff's Motion to Alter or Amend concerns the Court's Order dated October 27, 2015, which formalizes the rulings Judge Benjamin issued from the bench at the hearing on October 15, 2015. Specifically, the Plaintiff takes issue with the Order's grounds for denial of his Motion for a Ruling to Show Cause. Those grounds are set forth on page 3 of the Order as follows:

The Plaintiff's Motion for a Ruling to Show Cause is based on his assertion that SCDMH suspended his computer privileges and confiscated floppy disks from him in retaliation against his filing of this lawsuit. The Court finds that the Circuit Court does not have jurisdiction over this matter. Grievances should be taken through the SCDMH of the SCDC. Decisions should be appealed to an Administrative Law judge. Accordingly, the Plaintiff's Motion for a Ruling to Show Cause is **DENIED**.

The Plaintiff "strenuously disagrees" with the conclusion that this Court lacks jurisdiction over his Motion for a Ruling to Show Cause and that he should appeal SCDMH decisions to the

Administrative Law Court (the "ALC").¹ He argues the ALC does not have appellate jurisdiction to review decisions of SCDMH based on an opinion of The Honorable Ralph King Anderson III, Chief Administrative Law Judge, that SCDMH "is not an agency for which the Administrative Law Court has jurisdiction."

As to whether the ALC has jurisdiction to hear appeals from SCDMH decisions, SCDMH is in agreement with the Plaintiff. The ALC lacks such jurisdiction. The Supreme Court has held that a sexually violent predator is a civil committee and does not enjoy the same constitutional rights as a criminal defendant. See In re Canupp, 380 S.C. 611, 617-19, 671 S.E.2d 614, 617-18 (2008). Accordingly, because the Plaintiff is not an inmate, the holding of Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), that inmates may appeal certain decisions of the South Carolina Department of Corrections to the ALJ does not apply to him, other residents of the SVPTP, or SCDMH. Neither the Supreme Court nor the Court of Appeals has ever held that the ALC has jurisdiction over decisions by SCDMH, including decisions regarding grievances filed by SVPTP residents. Moreover, because the ALC is a creature of statute, the General Assembly has the authority to establish and limit the ALC's jurisdiction. Howard v. S.C. Dep't of Corrections, 399 S.C. 618, 627, 733 S.E.2d 211, 216 (2012). In 2006 Act No. 387, the General Assembly gave the ALC appellate jurisdiction to review decisions of a number of state agencies, but SCDMH was not among them. There is no provision in the Sexually Violent Predator Act or any other statute which provides for appellate review by the ALC of decisions made by SCDMH.

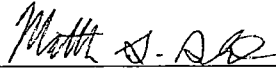
¹ The Plaintiff asserts this conclusion is "the opinion of the Defendant, whereas they [sic] wrote the proposed order." Motion to Alter or Amend at 1. See also id. at 4 (asserting the Court should "not blindly follow proposed orders from the Defendant, without proper scrutiny[.]"). However, while counsel for SCDMH did submit a draft order for the Court's consideration, the Court did not "blindly follow" it. Indeed, the section of the Order with which the Plaintiff takes issue was rewritten by the Court prior to the Order's entry.

SCDMH thus concurs with the Plaintiff that the Court's Order dated October 27, 2015 should be altered or amended to remove references to an appeal by the Plaintiff to the ALC. Instead, SCDMH respectfully requests that the Plaintiff's Motion for a Ruling to Show Cause be denied on the merits. The following language is proposed to be substituted for the paragraph quoted from the Order above:

The Plaintiff's Motion for a Ruling to Show Cause is based on his assertion that SCDMH suspended his computer privileges and confiscated floppy disks from him in retaliation against his filing of this lawsuit. However, he has submitted no evidence in support of his assertion, but only his personal speculation. On the other hand, SCDMH has submitted a sworn affidavit from Holly Scaturo, the director of the SVPTP, in which Ms. Scaturo explains that SCDMH suspended the computer privileges of all SVPTP residents and confiscated floppy disks from all SVPTP residents in or about October 2014 in response to residents' numerous abuses of their computer privileges and violations of SVPTP computer policies. Based on Ms. Scaturo's un rebutted testimony, I find that there was nothing improper about SCDMH's decision to suspend residents' computer privileges and confiscate their floppy disks and that such action was not taken in retaliation for the Plaintiff's filing of this lawsuit. Accordingly, the Plaintiff's Motion for a Ruling to Show Cause is **DENIED**.

Alternatively, the Court could rely on one or more abstention doctrines/principles to deny the Plaintiff's Motion for a Ruling to Show Cause without reaching the merits, such as the separation of powers doctrine or the principle that courts should not issue advisory opinions. See, e.g., Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n, 407 S.C. 67, 81, 753 S.E.2d 846, 853 (2014) ("In our constitutional system of government with its separation of powers, courts exercise the limited constitutional function of the 'judicial power.' Accordingly, courts are limited to resolving cases and the powers inherent in that function.") (citing S.C. Const. art. V, § 1); Booth v. Grissom, 265 S.C. 190, 192, 217 S.E.2d 223, 224 (1975) ("It is elementary that the courts of this State have no jurisdiction to issue advisory opinions.").

To the extent set forth herein, the Defendant, South Carolina Department of Mental Health, respectfully concurs in the Plaintiff's Motion to Alter or Amend.



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