

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Abukar H. Ahmed, :
Plaintiff : Civil Action 2:10-cv-00342
v. : Judge Smith
Abdi Aden Magan, : Magistrate Judge Abel
Defendant :

STIPULATED REVISED PRETRIAL ORDER

A preliminary pretrial was held June 24, 2010. Counsel for all parties appeared. The Court issued a preliminary pretrial order, which the parties now stipulate should be revised as set forth below. The parties request that the Court revise the pretrial order in accordance with this stipulation.

Rule 26(a)(1) disclosures.

The parties will make their Rule 26(a)(1) disclosures on or before **June 25, 2010**.

Jurisdiction and venue.

Venue is proper in the Southern District of Ohio, Eastern Division. Jurisdiction is alleged under 28 U.S.C. §§ 1331 and 1350. There are no contested issues involving personal jurisdiction or venue. Any motion addressing subject matter jurisdiction must be filed on or before July 16, 2010.

Amendments to pleadings.

No amendments to the pleadings are anticipated. The parties will remain as pleaded.

Allegations in the pleadings.

The complaint makes the following allegations. On November 20, 1988, plaintiff Abukar Hassan Ahmed, a human rights attorney and law professor at Somali National University, was taken into detention at the National Security Service of Somalia (“NSS”) Department of Investigations Prison, interrogated and tortured for approximately three months. He suffered severe physical and psychological injuries as a result of his detention and torture.

Defendant Colonel Abdi Aden Magan, who now resides in Columbus, Ohio, ordered, conspired with, aided and abetted, or exercised command responsibility over subordinates in the NSS, or persons or groups acting in coordination with the NSS or under their control, to carry out the torture, arbitrary detention and cruel, inhuman or degrading treatment or punishment of Ahmed. Further, Magan failed to prevent or punish the violations of international law committed by his subordinates.

Defendant Magan is a member of the Marehan sub-clan of the Darod clan, the same sub-clan as Major General Mohamed Siad Barre, who ruled Somalia from 1969 until 1991.

As a member of the favored Marehan sub-clan, Magan was appointed to top positions in the NSS. From 1988 to 1990, he held the rank of Colonel and served as Chief of the NSS Department of Investigations - National Level at NSS Headquarters in Mogadishu, Somalia. As Chief of NSS Investigations, Magan directed and participated in the interrogation and torture of Ahmed and other civilians seen as opponents of the Barre regime.

Defendant Magan denies the actionable allegations in the complaint.

Experts' disclosures.¹

Any expert who may give evidence supporting a party's claims or defenses must make his or her Rule 26(a)(2) disclosures no later than **March 30, 2011**. Any responsive experts' Rule 26(a)(2) disclosures must be made no later than **May 2, 2011**.

Generally, treating physicians and psychologists are not specially retained within the meaning of Rule 26(a)(2)(B). *Fielden v. CSX Transportation, Inc.*, 482 F.3d 866, 869-71 (6th Cir. 2007). Unlike specially retained experts, treators make available office notes and other treatment records created for the purpose of providing medical care over a period of time to their patient. Their business is providing medical care to patients, not providing expert opinions for litigation. They should not be burdened with preparing a Rule 26(a)(2) report.

Plaintiff as a party is required to respond to interrogatories about what medical opinions plaintiff intends to elicit from treators. Defendant may depose treators.

Rule 26(e)(2) supplementation.

Under the provisions of Rule 26(e)(2), Fed. R. Civ. P., the parties are under a duty "seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other party during the discovery process or in writing." The parties are **directed** to review their responses to written discovery on or before **May 5, 2011** and promptly make any supplemental disclosures required by Rule 26(e)(2).

¹ Ordinarily plaintiff's experts make their Rule 26(a)(2) disclosures, then defendant's experts respond with their disclosures. But when a plaintiff truly intends to offer no expert testimony supporting his or her claims (but the defendant chooses to offer expert testimony on them) or a defendant intends to support a defense with expert testimony, then the defendant's experts must make their disclosures by the first deadline. Rebuttal experts are strictly limited to rebutting unanticipated opinions expressed by a responsive expert.

Discovery and case-dispositive motions deadlines.

All discovery must be completed by **June 20, 2011**. Case-dispositive motions must be filed on or before **July 21, 2011**.

Status report required. Counsel are DIRECTED to call my office (614.719.3370) on or before **September 15, 2010** to schedule a conference to discuss the progress of discovery, any amendments to this scheduling order, and the parties settlement positions.

Rule 26(a)(3) disclosures.

The parties must make and file with the Court the disclosures required by Rule 26(a)(3)(A), Fed. R. Civ. P., no later than **30 days prior to the date noticed for the final pre-trial conference**. Rule 26(a)(3)(B), Fed. R. Civ. P. Alternatively, by agreement the parties may choose to make their Rule 26(a)(3) disclosures in the final pretrial order.

Attorneys' fees.

The complaint prays for an award of attorney fees. To facilitate settlement evaluation, plaintiff's counsel is DIRECTED to quarterly report to defense counsel the number of hours of legal services rendered and the rate(s) at which those services are billed. The first quarterly report should cover all services rendered through **June 30, 2010**. This is not a bill you would send a client. It is just the gross number of hours of legal services and the rates at which those services are billed. The sole purpose is to facilitate settlement discussions.

Settlement.

Plaintiff will make a settlement demand no later than **21 days after defendant's counsel takes plaintiff's deposition**. Defendant will respond to that demand **within 28 days of receiving it**. The parties will participate in the March 2011 Settlement Week. If any party later concludes that mediation then would not assist the parties, that party should contact opposing counsel and call my office (614-719-3370) no later than **January 24, 2011** to set up a telephone conference

with all counsel to ask the Court not to notice this case for mediation then. Counsel should also be prepared to discuss the status of discovery and whether the mediation should be rescheduled to a later date.

Other.

The witnesses are in the United States, England, Canada and other nations. Counsel will consult and discuss how to take depositions. Plaintiff’s counsel said that some witnesses have expressed concerns about personal safety. Counsel will consult and discuss ways to minimize the risks to the personal safety of all witnesses.

Stipulated to this 10th day of January, 2011

By: /s/ Tiffany Smith
Attorneys for Plaintiff

By: /s/ Jeff Donnellon
Attorneys for Defendant

So Ordered:

United States Magistrate Judge