

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

MICHAEL ALLEN PORTER,)
)
 Plaintiff,)
)
 v.)
)
 (FNU) ROSS,)
)
 Defendant.)
 _____)

No: 13-03003-JTM-GLR

MEMORANDUM AND ORDER

Plaintiff Michael Allen Porter (Plaintiff) filed a *pro se* civil rights complaint on January 8, 2013.¹ This matter is before the Court on Plaintiff's Motion for Stay of Discovery (ECF 28) and Defendant's Motion for Extension of Time (ECF 30). The matter is fully briefed and the Court is prepared to rule. For the reasons set forth below, the Court finds that the motion for stay should be denied and the motion for extension of time should be granted.

Defendant served his First Interrogatories, First Request for Production of Documents and First Requests for Admissions upon Plaintiff on February 13, 2014. Plaintiff served his opening discovery requests upon Defendant on February 24, 2014. Defendant seeks an extension of time to respond to Plaintiff's opening discovery requests to a date after the Court rules on Plaintiff's motion to stay discovery, and specifically, to a date eleven days after Plaintiff serves his responses to Defendant's opening discovery requests. Plaintiff has not responded to Defendant's motion for extension of time.

Plaintiff seeks to stay all discovery until the Court has issued a Scheduling Order in this case. Plaintiff alleges that Defendant's discovery requests are in violation of Fed. R. Civ. P. 26(d)(1)

¹See 42 U.S.C. § 1983.

which provides that:

A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order.²

This case falls within one of the exceptions set forth in Rule 26(a)(1)(B)—“an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision.”³ Plaintiff argues that even if this case is exempt from initial disclosures, discovery still may not begin until a scheduling conference and order have been issued by the Court. However, pursuant to the District of Kansas Local Rules, this action is exempt from the scheduling order requirements of Fed. R. Civ. P. 16(b), unless the court orders otherwise in a particular case.⁴

Plaintiff also alleges that he is to be released from custody on June 17, 2014, and requests a stay to allow additional time to find counsel to represent him in this case prior to responding to discovery. The Court finds that a stay of this case pending Plaintiff’s possible release and possible retention of counsel is not justified. The Court previously denied Plaintiff’s request for appointment of counsel, finding that (1) Plaintiff has not affirmatively shown that he asserts meritorious claims or that he cannot adequately research and investigate the case, (2) the factual and legal issues do not appear to be complex, (3) his written submissions reflect an understanding of court rules and procedures, and (4) he has not shown lack of reasonable access to a law library and its materials.⁵

However, the Court will grant both parties an extension of time to respond to the opposing

²Fed. R. Civ. P. 26(d)(1).

³Fed. R. Civ. P. 26(a)(1)(B)(iv).

⁴D. Kan. Rule 16.1(b)(2).

⁵ECF 23.

party's discovery requests. Plaintiff shall respond to Defendant's First Interrogatories, First Request for Production of Documents and First Requests for Admissions by May 20, 2014. Defendant shall respond to Plaintiff's First Set of Requests for Interrogatories, Admissions and Discovery by June 3, 2014. Furthermore, although this case is exempt from the requirements of Fed. R. Civ. P. 16(b), the Court finds that a scheduling conference would be beneficial in this case. The Court sets this matter for a telephonic scheduling conference on June 5, 2014 at 1:15 p.m.

IT IS SO ORDERED.

Dated in Kansas City, Kansas on this 29th day of April, 2014.

S/Gerald L. Rushfelt
Gerald L. Rushfelt
United States Magistrate Judge