

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

WILLIAM F. DAVIS, III,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 05-67-SLR
)	
WARDEN RAPHAEL WILLIAMS,)	Jury Trial Requested
FIRST CORRECTIONAL MEDICAL,)	
DR. BOSTON, BRIAN CASEY,)	
C/O DAVIES, CAPTAIN EMMIT)	
C/O REGINALD MAYES, and)	
DEBRA MUSCARELLA,)	
)	
Defendants.)	

STATE DEFENDANTS’ MOTION FOR ENLARGEMENT OF TIME

COMES NOW, State Defendants Warden Raphael Williams, C/O Kerry Davies, Deputy Warden Mark Emig, and C/O Reginald Mays (the “State Defendants”), by and through their undersigned counsel, and hereby move this Honorable Court (the “Motion”) to enter an Order, granting an enlargement of time pursuant to Rule 6(b)(2) of the Federal Rules of Civil Procedure, in which to file a motion for summary judgment in the above-captioned case. In support of the Motion, State Defendants state as follows:

1. Plaintiff William F. Davis, III (“Davis” or “Plaintiff”) is an inmate presently incarcerated at the Delaware Correctional Center (“DCC”) in Smyrna, Delaware. Davis is appearing *pro se* in this matter with leave to proceed *in forma pauperis*.

2. On January 10, 2007, State Defendants filed and served State Defendants’ Combined First Set of Interrogatories and Requests for Production of Documents Directed to Plaintiff (D.I. 37) (the “Discovery Requests”). Pursuant to the

Federal Rules of Civil Procedure, Plaintiff's responses to the Discovery Requests were due on February 9, 2007. Davis, however, did not file responses to the Discovery Requests. Thus, on April 10, 2007 and again on May 7, 2007, the undersigned counsel sent Plaintiff letters asking him to respond to the Discovery Requests.

3. On June 15, 2007, while discovery was pending, this Court entered a scheduling order setting August 13, 2007 as the discovery deadline. The Court also set September 13, 2007 as the date all summary judgment motions are due. (D.I. 40).

4. Less than one month after the Court entered the scheduling order, State Defendants sent Plaintiff a letter requesting responses to the Discovery Requests. (D.I. 45, filed July 10, 2007). Plaintiff did not respond to the letter nor did he send his discovery responses.

5. Rather than waste the Court's time and resources with a motion to compel Plaintiff's responses to discovery, State Defendants opted instead to depose Plaintiff and seek responses to the Discovery Requests during the deposition. Thus, on August 8, 2007, State Defendants deposed Plaintiff.

6. At Plaintiff's deposition, State Defendants learned that Plaintiff received treatment for the injuries alleged in his Complaint at two different hospitals. State Defendants also learned that they did not have copies of all of the medical records related to Plaintiff's alleged injuries. As a result, State Defendants' counsel informed Plaintiff that, after the deposition, she would send him a request for release of medical records which she would like him to sign. Plaintiff agreed to sign the release.

7. On or about August 14, 2007, Plaintiff returned the signed medical release to State Defendants' counsel. The undersigned counsel then sent a request for

medical records with the signed release to the hospitals where Plaintiff claimed he had received treatment. To date, State Defendants have not received all of the requested medical records from the hospitals.

8. Due to Plaintiff's failure to timely respond to discovery and due to State Defendants' need for the relevant medical records, State Defendants request an extension of time of approximately thirty (30) days, from September 13, 2007 until on or before October 15, 2007¹, in which to file a motion for summary judgment.

9. This is State Defendants' first request for an extension of time.

10. There is no trial date scheduled in this case.

WHEREFORE, State Defendants respectfully request that the Court grant the Motion and enter an Order, substantially in the form attached hereto, enlarging State Defendants' time to file a motion for summary judgment until on or before October 15, 2007.

**DEPARTMENT OF JUSTICE
STATE OF DELAWARE**

/s/ Erika Y. Tross

Erika Y. Tross (#4506)

Deputy Attorney General

820 N. French Street, 6th Floor

Wilmington, DE 19801

(302) 577-8400

Attorney for the State Defendants

Dated: September 7, 2007

¹ Thirty (30) days from September 13, 2007 is Saturday, October 13, 2007. The next business day is Monday, October 15, 2007.

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)	
Defendants.)	

CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 7.1.1

The undersigned counsel hereby certifies, pursuant to Rule 7.1.1 of the Local Rules for the District Court of Delaware, that she is, as a practical matter, unable to discuss the subject of this Motion with the Plaintiff because the Plaintiff is an incarcerated inmate in a prison. State Defendants’ counsel assumes that the Plaintiff opposes the Motion.

**DEPARTMENT OF JUSTICE
STATE OF DELAWARE**

/s/ Erika Y. Tross

Erika Y. Tross (#4506)
Deputy Attorney General
820 N. French Street, 6th Floor
Wilmington, DE 19801
(302) 577-8400
Attorney for the State Defendants

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ORDER

Upon the State Defendants’ Motion For Enlargement Of Time (the “Motion”); and it appearing that good and sufficient notice of the Motion has been given; and after due deliberation thereon:

IT IS HEREBY ORDERED as follows:

1. The Motion is **GRANTED**.
2. State Defendants have until on or before October 15, 2007 to file a motion for summary judgment.

SO ORDERED this _____ day of _____, 2007.

The Honorable Sue L. Robinson
United States District Court Judge

CERTIFICATE OF SERVICE

I, Erika Y. Tross, Esq., hereby certify that on September 7, 2007, I caused a true and correct copy of the attached *State Defendants' Motion for Enlargement of Time* to be served on the following individuals in the form and manner indicated:

VIA FIRST CLASS MAIL:

Inmate William F. Davis, III
SBI #162762
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

VIA ELECTRONIC DELIVERY:

Daniel L. McKenty, Esq.
Heckler & Frabizzio
800 Delaware Avenue, Suite 200
P.O. Box 128
Wilmington, DE 19899-0128
(302) 573-4800
dmckenty@hfddel.com

/s/ Erika Y. Tross

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