

VERMONT SUPERIOR COURT
Orleans Unit
247 Main Street
Newport VT 05855
802-334-3305
www.vermontjudiciary.org



CIVIL DIVISION
Case No. 129-6-16 Oscv

Billis vs. State of Vermont

ENTRY REGARDING MOTION

Title: Motion for Relief from Pretrial Discovery Order (Motion: 25)
Filer: Pamela Gayle Lacher
Filed Date: August 26, 2022

The motion is DENIED.

This is a post conviction relief case filed six years ago based on two claims: discovery of new medical information, and ineffective assistance of counsel. The case has been delayed for an unusual amount of time largely due to assignment of an expert attorney related to the ineffective assistance of counsel claim. Petitioner's expert on the medical claim, Dr. Abrams, was identified early on in the case and at least by 2018. Pretrial discovery orders have been amended over time, primarily due to the issue of assignment of an expert attorney.

On June 5, 2022, once the expert attorney issue was resolved and the case could move forward, Petitioner again disclosed Dr. Abrams as a medical expert. At a status conference on June 22, 2022, the court required supplementary disclosure by June 29, 2022, to include resume, qualifications as expert, substance of facts and opinions for testimony, and summary of grounds for opinions.

On June 29 and July 5, Petitioner sought to extend the date and specifically requested an extended date of August 29, 2022. Respondent State opposed the request and filed a motion to exclude experts.

In a detailed ruling issued August 1, 2022, the court granted the extension to August 29, denied the motion to exclude, and set out a detailed revised pretrial order with the clear intention of finally moving the case forward. The Order was specific about the content required for the disclosure of both medical and legal experts due by August 29. The Order included the following in bold typeface: **"This is a firm date. No extensions will be granted except under extraordinary circumstances. . All deadlines will be strictly enforced. Deadlines may only be changed by order of the court upon motion."**

On August 26, Petitioner's attorney filed the within motion seeking an additional 60 days for the medical expert disclosures required, based on a text received the night before from Dr. Abrams in which he stated he needed more time to review material.

The motion is denied for the reasons in the State's Opposition: Dr. Abrams was identified years ago and has had ample time to review the material for this case; the case is unusually old; the Order allowing the extension required rigorous compliance and specifically identified extraordinary circumstances as a necessary standard for any additional extensions; and the reason for the request does not show extraordinary circumstances.

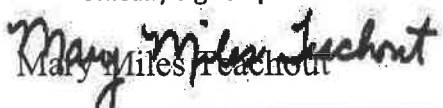
This case has been unusually delayed, but the medical claim has been part of the case from the outset, and Dr. Abrams was identified early on as the expert. His role as expert was known and the material to be reviewed was available as shown by the exhibits to the State's Opposition. He was again disclosed on June 5, 2022. Additional content for the required disclosure was clarified as of June 22. The request for an additional two months was granted and the disclosure date extended to the specific date requested by Petitioner.

The basis for the new request for yet additional time seems to be that the expert did not budget his preparation time. This is an issue for every expert in every case involving expert testimony, as there is almost always a specific deadline for disclosure of expert opinion testimony in order for such testimony to be part of the case. There is no representation of illness or an unanticipated emergency or condition that interrupted the preparation time. The fact that he was called to testify in another case in Arizona is not a situation of extraordinary circumstances. His identity as expert in the case has been known for four years, and preparation time for the level of specificity required was two full months, from June 22 to August 29. The court was quite clear that given the age and delays of the case, deadlines would be strictly observed. The required standard of a showing of extraordinary circumstances for any further extensions has not been met.

While the court is mindful of the desirability of claims being decided on the merits as a general proposition, that does not outweigh the competing policy of fairness to the opposing party and the need to comply with timely management of court cases in the administration of justice, and it cannot automatically justify ignoring deadlines. The necessity of compliance with court deadlines in order to bring resolution to a case is particularly acute in a situation such as this which has already been significantly delayed, and where the necessity and standards for compliance were clearly identified.

The deadline for expert disclosures is not extended. Petitioner will therefore not be permitted to present expert evidence on the medical claim. The pretrial scheduling deadlines in the Order of August 1, 2022 remain in effect.

Electronically signed pursuant to V.R.E.F. 9(d) on September 21, 2022 at 11:25 AM.

A handwritten signature in black ink that reads "Mary Miles Teachout". The signature is written in a cursive, flowing style.

Mary Miles Teachout
Superior Court Judge