IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY ___ D.C.
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ROBERT R. DI TROLIO
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CLEMMIE SALES,	)	
Plaintiff,	)	
vs.	)	No. 03-2946 BP
FAYETTE COUNTY, et al.,	)	
Defendants.	)	

ORDER GRANTING IN PART PLAINTIFF'S MOTION TO COMPEL

Before the Court is Plaintiff Clemmie Sales's Motion to Compel, filed on October 15, 2004. Defendants Fayette County, Sheriff Bill Kelley, Deputy Zack Vierheller, Deputy Mike Wilhite, and Deputy Hilton Cohea filed their response on November 1, 2004. The Court held a telephone conference call with the parties on November 16, 2004, at which time the parties informed the Court that they had resolved most of the issues. The only remaining discovery dispute involves information regarding other civil rights lawsuits involving these same Defendants. For the reasons below, the motion to compel is GRANTED in part.

I. BACKGROUND

In this lawsuit, Plaintiff contends that Defendants violated her constitutional rights, and brings causes of action under 42

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U.S.C. § 1983 and several state law claims.[1] The thrust of Plaintiff's claims is that the Defendants violated her Fourth Amendment right to be free from false arrest and imprisonment, and that they violated her due process rights under the First, Sixth, and Fourteenth Amendments to the Constitution.[2] (Complaint at ¶ V.1)

The only outstanding issue presently before the Court relates to an identical interrogatory propounded on each defendant. Interrogatory No. 8 asks each of the individual defendants to "[p]lease describe each and every lawsuit you have been involved in concerning the arrest and treatment of inmates of Fayette County Jail. For each lawsuit, please describe the complaint, the

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[1] Plaintiff claims damages for assault, false imprisonment malicious prosecution, battery, intentional infliction of emotional distress, and libel and slander under Tennessee law.

[2] Although Plaintiff only makes the broad statement that her due process rights were violated, other paragraphs in her complaint provide further description of her allegations. They include the following: (1) defendants delayed the investigation efforts, which obstructed legitimate efforts to resolve this matter and interfered with the right of access to courts and evidence (Complaint at ¶ V.7); (2) defendants were deliberately indifferent in the supervision and oversight of Plaintiff's arrest (Complaint at ¶ V.3); (3) Fayette County has a policy of non-action regarding the intervention into false arrest and improper investigation (Complaint at ¶ V.6); (4) defendants were deliberately indifferent in the recruitment, hiring, training, supervision, and discipline of deputies (Complaint at ¶ V.8); and (5) defendants maintain an unwritten policy wherein officers cover up unlawful and unconstitutional acts of other officers (Complaint at ¶ V.17).

disposition and date, and the style of the case."[3] Similarly, Interrogatory No. 8 served on Fayette County asks, "[f]or each Fayette County Defendant, please describe each and every lawsuit said Defendant has been involved in concerning the arrest and treatment of inmates at Fayette County Jail. For each lawsuit, please describe the complaint, the disposition and date, and the style of the case."

Defendants object to these discovery requests and argue that they are overly broad, unduly burdensome, and not relevant to the Plaintiff's claims.

II. ANALYSIS

In the context of discovery, relevance is construed broadly. The Federal Rules of Civil Procedure provide that "[r]elevant information need not be admissible at trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1).[4] The burden is on

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[3] The wording of the interrogatory propounded on Sheriff Kelley differs only slightly to that of the other individual defendants. These differences do not change the substance of the request.

[4] Municipal liability attaches in this case to Fayette County because it is a named defendant and because each of the individual defendants are sued in their official capacities. Individuals sued in their official capacities stand in the shoes of the entity they represent. Kentucky v. Graham, 473 U.S. 159, 165 (1985)(citing Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690 n.55 (1978)); Phebus v. City of Memphis, No. 03-2820, 2004 WL 2375606 (W.D. Tenn. Oct. 5, 2004)(Breen, J.). Because Sheriff Kelley is only sued in his official capacity, and not in his personal capacity, the Court's analysis as to the discovery of

the party resisting discovery to clarify and explain precisely why its objections are proper given the broad and liberal construction of the discovery rules. See MJS Janitorial v. Kimco Corp., No. 03-2102, 2004 WL 2905409, at *6 (W.D. Tenn. April 19, 2004).

Generally, in the context of civil rights litigation, information about prior lawsuits involving the same defendants and similar types of claims are discoverable. See, e.g., Estate of Sorrells v. City of Dallas, 192 F.R.D. 203, 211 (N.D. Tex. 2000); Laws v. Cleaver, No. 96-CV-92, 1999 WL 33117449, at *3 (D. Conn. Nov. 17, 1999) (unpublished); Cox v. McClellan, 174 F.R.D. 32, (W.D.N.Y. 1997); Johnson v. City of Philadelphia, No. 94-1429, 1994 WL 612785, at *11 (E.D. Pa. Nov. 7, 1994) (unpublished); Cameron v. City of Philadelphia, No. 90-2928, 1990 WL 151770, at *5 (E.D. Pa. Oct. 4, 1990) (unpublished); Hurley v. Keenan, Civ. 4772, 1984 WL 358, at *3 (S.D.N.Y. May 8, 1984).

Base on the above case law, this Court likewise concludes that discovery relating to other lawsuits, assuming there are others, could lead to the discovery of admissible evidence.[5] There are a number of ways in which information discovered from other lawsuits involving the same defendants and similar types of claims might

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information and documents from Sheriff Kelley and Fayette County is the same.

[5]Admissibility of such evidence at trial is another matter, however. This discovery order is without prejudice to defendants later filing a motion *in limine* to preclude admission of any such evidence.

lead to admissible evidence. First, under the Federal Rules of Evidence, evidence of similar acts may be admissible for such purposes as "proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Fed.R.Evid. 404(b). See Cameron, 1990 WL 151770, at *5 ("Prior complaints, lawsuits, and disciplinary proceedings involving Defendant Lemasters are relevant to proving the claims against her and may be admissible to show motive, intent, absence of mistake, or entitlement to punitive damages.") Second, evidence of prior bad acts could be used at trial for the purposes of impeachment during cross examination. Third, prior lawsuits might establish a basis for supervisor liability. See Cox, 174 F.R.D. at 34; cf. Minguez v. Bezio, No. 96-5396, 1999 WL 637228, at *1 (S.D.N.Y. Aug. 19, 1999) (unpublished) (denying discovery requests for defendants' actions and judgments as immaterial where there is no claim of supervisory misconduct).

Although the information regarding other lawsuits is relevant, the discovery request as written is overly broad and unduly burdensome. The Plaintiff requests information on any lawsuit regarding "the arrest and treatment of inmates at Fayette County Jail." Looking to her complaint, Plaintiff's request is outside the scope of her claims. For example, Plaintiff has not alleged anything in her complaint suggesting physical abuse of inmates, even though this might fall under the purview of "treatment."

Consequently, the request must be limited to those lawsuits which have claims similar to those claims at issue in the present case See Johnson, 1994 WL 612785, at *11 (holding that "information concerning prior lawsuits involving the defendant officers alleging claims similar to those in the present suit is also discoverable").

Additionally, Plaintiff's request has no temporal bounds. Discovery of dated information becomes less likely to lead to admissible evidence, and thus it would be unduly burdensome to require production in those cases. As a result, the Court will limit the request to other lawsuits that were filed within five years prior to December 16, 2003 (the filing date of this lawsuit).[6]

As a final matter, Defendants argue that it is unfair to require them to produce information related to all lawsuits filed against them because there may be lawsuits filed that were never served on defendants. For example, Defendants note that in this district, complaints filed by pro se plaintiffs in federal court are "screened" by pro se staff attorneys which often times results in the complaint being dismissed. In those cases, Defendants may not be aware that a complaint was even filed against them. The Court agrees, and therefore will further limit the scope of

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[6]Although this particular discovery request does not include any time limitation, some of the other discovery requests include a five-year time limitation. The Court believes this same five-year period should also apply to Plaintiff's discovery of other lawsuits.

discovery to lawsuits in which the Defendants were actually served with the complaint.

III. CONCLUSION

For the reasons stated above, the motion is GRANTED in part. The information provided shall include a description of the complaint, the disposition and date, and the style of the case. This information shall be provided to Plaintiff within twenty (20) days from the date of this order.

IT IS SO ORDERED.

TU M. PHAM
United States Magistrate Judge

1/10/05
Date

UNITED STATES DISTRICT COURT - WESTERN DISTRICT OF TENNESSEE

Notice of Distribution

This notice confirms a copy of the document docketed as number 34 in case 2:03-CV-02946 was distributed by fax, mail, or direct printing on January 10, 2005 to the parties listed.

Brandon O. Gibson
PENTECOST GLENN & RUDD, PLLC
106 Stonebridge Blvd.
Jackson, TN 38305

Randall Blake Tolley
LAW OFFICE OF RANDALL B. TOLLEY
242 Poplar Ave.
Memphis, TN 38103

James I. Pentecost
PENTECOST GLENN & RUDD, PLLC
106 Stonebridge Blvd.
Jackson, TN 38305

Honorable J. Breen
US DISTRICT COURT