

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

UNITED STATES OF AMERICA

PLAINTIFF

V.

CIVIL ACTION NO.: 3:16-CV-00622-CWR-FKB

THE STATE OF MISSISSIPPI

DEFENDANT

**THE STATE OF MISSISSIPPI'S RESPONSE TO
PLAINTIFF'S MOTION FOR CLARIFICATION OF MISSISSIPPI
RULE 4.2 OF THE MISSISSIPPI RULES OF PROFESSIONAL CONDUCT**

The State of Mississippi responds in opposition to Plaintiff's Motion for Clarification of Rule 4.2 (ECF 335) as follows:

1. The Court should deny Plaintiff's Motion for Clarification of Rule 4.2 (ECF 335) and prohibit Plaintiff from communicating *ex parte* with the Community Mental Health Centers (CMHCs). Since the inception of this litigation, Plaintiff has treated the CMHCs as instrumentalities of the State of Mississippi within the definition of "public entity" under Title II of the Americans With Disabilities Act. The Court agreed with Plaintiff in its Opinion and Order (ECF 234) and held that the State is liable under Title II for the acts or omissions of the CMHCs. The Court further expressly included the CMHCs in the Remedial Order (ECF 278), although the CMHCs are not parties to this action. The Court nonetheless presumably intends to hold the State responsible for the CMHC's compliance with the Remedial Order. That being the case, the Court should prohibit Plaintiff from communicating *ex parte* with the CMHCs.

2. The parties previously disputed the application of Rule 4.2 of the Rules of Professional Conduct in this case. In October 2018, Judge Ball issued an Order which held in pertinent part that Rule 4.2 prohibits Plaintiff from having *ex parte* communication with the following categories of persons:

- Any person whose act or omission in connection with the claims and allegations of the Complaint may be implied to the State of Mississippi for purposes of civil or criminal liability.
- Any person whose statements may be admissible against the State of Mississippi pursuant to Fed. R. Evid. 801(d)(2)(D).¹

3. Because the Court has previously held the State responsible for the acts, omissions, or statements of the CMHCs, and presumably intends to continue to do so in assessing the State's compliance with the Remedial Order, the Court should not allow Plaintiff to communicate *ex parte* with the CMHCs.

Relief Requested

For these reasons and as more fully explained in the State's supporting Memorandum, the Court should not permit Plaintiff to communicate *ex parte* with the CMHCs.

Dated: March 9, 2022.

Respectfully submitted,

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BY: /s/ James W. Shelson

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¹ ECF 128, Order at 6-7.

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CERTIFICATE OF SERVICE

I certify that on March 9, 2022, I electronically filed this document with the Clerk of the Court using the ECF system, which sent notification of such filing to all ECF counsel of record in this action. A copy was also emailed to the Monitor.

/s/ James W. Shelson
JAMES W. SHELSON