

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
MICHIGAN, SOUTHERN DIVISION

Christopher Scott Merrill v. Mark King, Mark Cooks, Stacy Lindahl,
and John Doe

Merrill · No. 22-cv-10541 · Decided February 2, 2026

SUMMARY

The United States District Court for the Eastern District of Michigan reviewed the parties’ objections to a magistrate judge’s discovery order in a prisoner civil-rights action concerning alleged deliberate indifference to medical and dental needs. The court affirmed the requirement that defendants consult relevant experts when responding to requests for admission and affirmed the resolution concerning production of medical records. The court otherwise held that defendants must conduct reasonable inquiries regarding information and documents within their control and supplement their discovery responses as appropriate.

CASE DETAILS

COURT	United States District Court for the Eastern District of Michigan, Southern Division
WRITING FOR THE COURT	Linda V. Parker
JURISDICTION	United States District Court for the Eastern District of Michigan, Southern Division
DECIDED	February 2, 2026
DOCKET	22-cv-10541
DISPOSITION	other
PROCEDURAL POSTURE	The parties objected under Federal Rule of Civil Procedure 72(a) to a magistrate judge's nondispositive discovery order. Plaintiff sought further answers to requests for admission and interrogatories and production of documents; Defendants objected to the ruling that they must consult their experts when responding to requests for admission.
STANDARD OF REVIEW	Under Federal Rule of Civil Procedure 72(a) and 28 U.S.C. § 636(b) (1)(A), a nondispositive magistrate-judge ruling must be affirmed unless it is clearly erroneous or contrary to law. Clear error exists when, after reviewing the entire record, the court is left with the

	definite and firm conviction that a mistake has been made; legal conclusions are reviewed independently.
PRECEDENTIAL VALUE	Unknown
PARTIES	Christopher Scott Merrill v. Mark King, Mark Cooks, D.D.S., Stacy Lindahl, John Doe

TOPICS

discovery dispute civil procedure section 1983 prisoners rights

PRACTICE AREAS

civil procedure civil rights prisoner litigation discovery

QUESTIONS PRESENTED

1. Whether a party responding to requests for admission must include consultation with the party's relevant experts as part of the reasonable inquiry required by Federal Rule of Civil Procedure 36.
2. Whether an individual responding to interrogatories may simply state that he does not know or does not recall, without making a reasonable inquiry into information within his control or otherwise obtainable.
3. Whether a responding party must make a reasonable inquiry and produce documents within its possession, custody, or control even when the documents are not physically on hand.
4. Whether the magistrate judge properly treated production of Merrill's remaining medical records as resolved by Defendants' agreement to produce them upon receipt of subpoenas.

HOLDINGS

1. A party responding to a request for admission must make a reasonable inquiry, including conferring with relevant experts when the expert is a readily obtainable source of information within the party's control.
2. A party responding to interrogatories must make a reasonable effort to obtain information within the party's control or otherwise obtainable; the party may not rely solely on an unexplained assertion of ignorance.
3. A party must inquire about and produce responsive documents within its possession, custody, or control; physical possession or having the documents 'on hand' is not required.
4. The magistrate judge properly treated Merrill's request for his remaining medical records as resolved by Defendants' agreement to produce them upon receipt of the necessary subpoenas.

KEY QUOTATIONS

"A party's expert is a "readily obtainable" source of information to answer a request for admission for which the party otherwise has no personal knowledge of the facts. A party's expert is someone within the party's control." (at 5)

“A party may not be compelled to produce information that she does not know, but she may not claim ignorance as an excuse to the requirements of discovery.” (at 7)

“While King, in fact, may still not have been able to answer the subject interrogatories even after engaging in such efforts—which his responses and arguments in response to Merrill’s objections suggest would have been the case—it was error to not require him to supplement his answers to confirm that reasonable efforts were made to respond.” (at 9)

“To the extent Magistrate Judge Altman held that Defendants do not need to engage in a reasonable inquiry and seek information or documents within their control before responding to Merrill’s interrogatories or requests for production of documents, such a conclusion was incorrect.” (at 14)

FACTUAL BACKGROUND

Merrill sought discovery concerning his dental and medical treatment in his § 1983 deliberate-indifference action. The disputed discovery included requests for admission, interrogatories, medical records, indemnification agreements and related documents, docket sheets, job descriptions, and transfer or ride-out sheets. Defendants' responses and objections were at issue, including whether they had made reasonable inquiries and whether responsive materials were within their possession, custody, or control.

PROCEDURAL HISTORY

Merrill, an MDOC prisoner, brought a 42 U.S.C. § 1983 action alleging deliberate indifference to serious medical needs. Magistrate Judge Kimberly G. Altman granted in part and denied in part Merrill's motion concerning the sufficiency of Defendants' discovery responses and denied his motion to compel. Both sides timely objected, and the district court reviewed the objections under the clearly erroneous or contrary-to-law standard.

DISPOSITION

other

REMAND INSTRUCTIONS

Defendants must supplement King’s interrogatory responses after making a reasonable inquiry into information within his control. Defendants must produce responsive indemnification agreements and documents within their possession, custody, or control, including materials within counsel's control, subject to legitimate grounds for nondisclosure; if none exist, they must provide an amended signed response. Defendants must also inquire whether documents responsive to the remaining disputed requests for production are within their control and produce them if they are. The court affirmed the rulings concerning consultation with experts for requests for admission and production of remaining medical records.

CASES CITED

- Anderson v. Bessemer City, N.C., 470 U.S. 564, 573-74 (1985)
- United States v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948)

- *Gandee v. Glaser*, 785 F. Supp. 684, 686 (S.D. Ohio 1992)
- *Drutis v. Rand McNally & Co.*, 236 F.R.D. 325, 330 (E.D. Ky. 2006)
- *McHugh v. Olympic Ent., Inc.*, 37 F. App'x 730, 742-43 (6th Cir. 2002), amended on denial of reh'g, 41 F. App'x 758 (6th Cir. 2002)
- *T. Rowe Price Small-Cap Fund, Inc. v. Oppenheimer & Co.*, 174 F.R.D. 38, 43 (S.D.N.Y. 1997)
- *Al-Jundi v. Rockefeller*, 91 F.R.D. 590, 593-94 (W.D.N.Y. 1981)
- *Maurer v. Jones*, No. 518CV00003, 2019 WL 3890924, at *4-5 (W.D. Ky. Aug. 19, 2019)
- *National Fire Insurance Co. of Hartford v. Jose Trucking Corp.*, 264 F.R.D. 233, 239 (W.D.N.C. 2010)
- *U.S. ex rel. Martino-Fleming v. S. Bay Mental Health Ctr., Inc.*, 332 F.R.D. 1, 7 (D. Mass. 2019)
- *Kaneka Corp. v. Zhejiang Med. Co.*, No. CV 11-2389, 2016 WL 11266869, at *8 (C.D. Cal. Oct. 18, 2016)
- *Advanced Cable Ties, Inc. v. Am. Elite Molding, LLC*, No. 3:18-cv-2035, 2019 WL 13280288, at *3 (N.D. Fla. Feb. 7, 2019)
- *In re Auction Houses Antitrust Litig.*, 196 F.R.D. 444, 445 (S.D.N.Y. 2000)
- *Allen v. Lickman*, No. 13-cv-13401, 2014 WL 12768335, at *1 n.2 (E.D. Mich. Oct. 31, 2014)
- *Flagg v. City of Detroit*, 252 F.R.D. 346, 353-54 (E.D. Mich. 2008)
- *Roby v. Bloom Roofing Sys., Inc.*, No. 22-cv-10622, 2023 WL 373603, at *1 (E.D. Mich. Jan. 24, 2023)
- *Wesley Corp. v. Zoom T.V. Prods., LLC*, No. 17-10021, 2018 WL 372700, at *4 (E.D. Mich. Jan. 11, 2018)
- *Michigan Bricklayers & Allied Craftworkers Health Care Fund v. DiPonio Constr. Co.*, No. 09-cv-14007, 2010 WL 11703427, at *4 (E.D. Mich. June 7, 2010)
- *Scott v. AREX, Inc.*, 124 F.R.D. 39, 41 (D. Conn. 1989)
- *Chicago Ins. Co. v. Wiggins*, No. 02-cv-73801, 2005 WL 8154397, at *2 (E.D. Mich. 2005)
- *Prokosch v. Catalina Lighting, Inc.*, 193 F.R.D. 633, 636 (D. Minn. 2000)
- *Bank of N.Y. v. Meridien BIAO Bank Tanzania Ltd.*, 171 F.R.D. 135, 146 (S.D.N.Y. 1997)
- *Gross v. Lunduski*, 304 F.R.D. 136, 142-43 (W.D.N.Y. 2014)
- *Alexander Interactive, Inc. v. Adorama, Inc.*, No. 12 Civ. 6608, 2014 WL 61472, at *1 (S.D.N.Y. Jan. 6, 2014)
- *Dreger v. KLS Martin LP*, No. 2:20-cv-3814, 2023 WL 532012, at *9 (S.D. Ohio Jan. 27, 2023)

OPINION

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION CHRISTOPHER SCOTT MERRILL, Plaintiff, v. Case No. 22-cv-10541 Honorable Linda V. Parker MARK KING,¹ MARK COOKS, STACY LINDAHL, and JOHN DOE, Defendants. _____/ OPINION AND ORDER In this civil rights action filed under 42 U.S.C. § 1983, Plaintiff Christopher Scott Merrill, a Michigan Department of Corrections (“MDOC”) prisoner, claims deliberate indifference to his serious medical needs related to the denial of dental and medical treatment.

The Defendants remaining in this action are MDOC Health Unit Manager Mark King, Mark Cooks, D.D.S, Nurse Stacy Lindahl, and John Doe. The matter is presently before the Court on the parties' objections (ECF Nos. 105, 106) to a discovery order issued by Magistrate Judge Kimberly G. Altman on June 26, 2025 (ECF No. 102). 1 Plaintiff did not know Defendant King's first name when initiating this lawsuit.

As his name is now known, the Court is sua sponte amending the caption to reflect it. Background In the order, Magistrate Judge Altman granted in part and denied in part Merrill's motion to determine the sufficiency of Defendants' answers to requests for admission and denied Merrill's motion to compel.

As relevant to the pending objections, Magistrate Judge Altman first concluded that the "reasonable inquiry" required of a party responding to requests for admission ("RFAs") includes the duty to consult with the party's experts. (Id. at PageID.2242.)

However, Magistrate Judge Altman did not find the same duty to inquire when responding to interrogatories, concluding that a party need answer only based on the party's existing personal knowledge. (Id. at PageID.2247-48.)

For that reason, the magistrate judge denied Merrill's motion to compel further answers to his Interrogatories 5, 9, 10, 14, 18 and 19. With regard to Merrill's request for the production ("RFP") of his medical records (RFPs 1 and 2), Magistrate Judge Altman found the issue resolved by MDOC's agreement to produce the records, without cost to Merrill, upon receipt of the relevant subpoena(s).

(Id. at PageID.2248-4.) As to Merrill's remaining RFPs, Magistrate Judge Altman held that, if Defendants responded that the documents were not in their "possession, custody, or control," then they could not be compelled to produce them. (Id. at PageID.2250-53.)

In those requests for 2 production, Merrill sought: (4) "all agreements and other documents discussing or providing indemnification to the Defendants in this lawsuit"; (5) "docket sheets for all lawsuits, arbitrations, or administrative proceedings in which Defendants Cook or King were a named party within the last 10 years"; (7) "a copy of the job descriptions of Defendants Cooks and King that were in existence from 2018- 2022"; and (11) "a copy of all of Plaintiff Merrill's Transfer/Ride Out sheets." Defendants and Merrill filed timely objections to Magistrate Judge Altman's decision.

(ECF Nos. 105, 106, respectively.) The objections are fully briefed. (ECF Nos. 108-111.) Standard of Review When a party objects to a magistrate judge's non-dispositive decision, the reviewing court must affirm the magistrate judge's ruling unless the objecting party demonstrates that it is "clearly erroneous" or "contrary to law." Fed. R. Civ. P. 72(a); 28 U.S.C. § 636(b)(1)(A).

The “clearly erroneous” standard does not empower a reviewing court to reverse a magistrate judge’s finding because it would have decided the matter differently. See, e.g., *Anderson v. Bessemer City, N.C.*, 470 U.S. 564, 573-74 (1985). Instead, the “clearly erroneous” standard is met when despite the existence of evidence to support the finding, the court, upon reviewing the record in its entirety, “is left with the definite and firm conviction 3 that a mistake has been committed.” *Id.* (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)).

The “contrary to law” standard requires the court to “exercise its independent judgment with respect to a [m]agistrate [j]udge’s legal conclusions[,]” and “overturn any conclusions of law which contradict or ignore applicable precepts of law, as found in the Constitution, statutes, or case precedent.” *Gandee v. Glaser*, 785 F. Supp. 684, 686 (S.D. Ohio 1992) (internal citations and quotations omitted).

Defendants’ Objection Defendants take issue with Magistrate Judge Altman’s conclusion that a party must consult with the party’s relevant expert(s) as part of the reasonable inquiry required when responding to requests for admission.

In reaching this conclusion, Magistrate Judge Altman relied on *Drutis v. Rand McNally & Co.*, 236 F.R.D. 325 (E.D. Ky. 2006), where the court held that the plaintiffs had to consult with their expert as part of the reasonable inquiry. Defendants argue that *Drutis* relied on a misinterpretation of *McHugh v. Olympic Ent., Inc.*, 37 F. App’x 730, 742-43 (6th Cir.

2002), amended on denial of reh’g, 41 F. App’x 758 (6th Cir. 2002). Defendants maintain that the remaining cases on which Magistrate Judge Altman relied are out-of-circuit and did not hold that an expert witness must be consulted, as a rule. 4 *McHugh* was but one of several cases the *Drutis* court cited to support its conclusion “that the better rule is that an answering party must conduct a reasonable inquiry and answer a RFA if the information is readily obtainable, even though the answering party has no personal knowledge of the facts.” *Drutis*, 236 F.R.D. at 330 (collecting cases).

One of the other sources cited in *Drutis*, the Comments to Rule 36, indicate that “[a] larger group of cases, supported by commentators, has taken the view that if the responding party lacks knowledge, he must inform himself in reasonable fashion.” Fed. R. Civ. P. 36 advisory committee’s note to 1970 amendment.

As the district court explained in yet another case cited by *Drutis*: What constitutes “reasonable inquiry” and what material is “readily obtainable” is a relative matter that depends upon the facts of each case. “However, because Rule 36 admission requests serve the highly desirable purpose of eliminating the need for proof of issues upon trial, there is a strong disincentive to finding an undue burden in responding where the responding party can make the necessary inquiries without

extraordinary expense or effort.” *T. Rowe Price Small-Cap Fund, Inc. v. Oppenheimer & Co.*, 174 F.R.D.

38, 43 (S.D.N.Y. 1997) (brackets, ellipsis, and internal citations removed) (quoting *Al- Jundi v. Rockefeller*, 91 F.R.D. 590, 593-94 (W.D.N.Y. 1981)). “Generally, a ‘reasonable inquiry’ is limited to review and inquiry of those persons and documents that are within the responding party’s control.” *Id.* 5 A party’s expert is a “readily obtainable” source of information to answer a request for admission for which the party otherwise has no personal knowledge of the facts.

A party’s expert is someone within the party’s control. Thus, Magistrate Judge Altman did not clearly err in holding that the reasonable inquiry required of Defendants when responding to Merrill’s requests for admission includes conferring with their experts. Merrill’s Objections Objection No. 1 Merrill first objects to Magistrate Judge Altman’s distinction between requests for admission and interrogatories with respect to the “reasonable inquiry” requirement.

Magistrate Judge Altman appears to have concluded that an individual, unlike a corporation, can respond “I do not know” to an interrogatory if the individual does not immediately possess the information to respond, even if some type of inquiry could provide the individual with that information. (See ECF No. 102 at PageID.2247.) Magistrate Judge Altman stated that an individual “is not required by the Rules to investigate the subjects of the interrogatories beyond what is readily available to him before responding...” (*Id.* (emphasis added).)

Although it is not immediately clear what Judge Altman meant by “readily available,” she concluded that it was unnecessary for King to supplement his 6 interrogatory responses because “[h]e answered the interrogatories that were within his knowledge and explained why the other ones were not.” (*Id.* at PageID.2248.) It seems that Magistrate Judge Altman interpreted “readily available” too narrowly.

In *Maurer v. Jones*, No. 518CV00003, 2019 WL 3890924 (W.D. Ky. Aug. 19, 2019)—one of the decisions Magistrate Judge Altman cited in support of her statement that “I do not know” is an acceptable response from an individual answering interrogatories—the court in fact found the defendant’s responses, such as “I don’t recall” and “I do not know,” to be “clearly insufficient.” *Id.* at *5.

The *Maurer* court indicated that “[i]n answering discovery requests, ‘the burden is on the defendants to make an inquiry to make and obtain information to answer interrogatories which would include obtaining the information to fully and completely answer the interrogatories.’” *Id.* at *4 (brackets omitted) (quoting *Nat’l Fire Ins. Co. of Hartford v. Jose Trucking Corp.*, 264 F.R.D.

233, 239 (W.D.N.C. 2010)). The court explained: “A party may not be compelled to produce information that she does not know, but she may not claim ignorance as an excuse to the

requirements of discovery.” *Id.* “Though there are limits on the extent to which a party can be required to hunt out information in order to answer interrogatories, it will be required to provide facts available to it without undue labor and expense.” Richard L. Marcus, 7 8B Fed.

Practice & Proc. Civ. § 2177 (3d ed.) “A responding party is not required to conduct extensive research in order to answer an interrogatory,” though “a reasonable effort to respond must be made.” *U.S. ex rel. Martino-Fleming v. S. Bay Mental Health Ctr., Inc.*, 332 F.R.D. 1, 7 (D. Mass. 2019) (quoting *Kaneka Corp. v. Zhejiang Med. Co.*, No. CV 11-2389, 2016 WL 11266869, at * (C.D.

Cal. Oct. 18, 2016)). As set forth earlier, “[w]hat constitutes ‘reasonable inquiry’ and what material is ‘readily obtainable’ is a relative matter that depends upon the facts of each case.” *T. Rowe Price*, 174 F.R.D. at 43. Nevertheless, “the party is required to respond ‘not only by providing the information it has, but also the information within its control or otherwise obtainable by it.’”² *Advanced Cable Ties, Inc. v. Am.*

Elite Molding, LLC, No. 3:18-cv-2035, 2019 WL 13280288, at *3 2 *Merrill* points to *Allen v. Lickman*, No. 13-cv-13401, 2014 WL 12768335 (E.D. Mich. Oct. 31, 2014), to argue that information Kings’ attorneys can obtain is information that can be obtained through a reasonable inquiry.

The magistrate judge in *Allen* recognized that “attorneys are agents of their clients[.]” *Id.* at *1 n.2 (citing *Flagg v. City of Detroit*, 252 F.R.D. 346, 353 (6th Cir. 2008)). The magistrate judge further noted the “well settled principle that if the client may be compelled to produce documents in his possession then the attorney may be compelled to produce the same documents when they are in his custody.” *Id.* (quoting *In re Ruppert*, 309 F.2d 97, 98 (6th Cir.

1962)). However, this does not mean that the lawyer must engage in a reasonable inquiry to obtain information responsive to an interrogatory directed at the lawyer’s client. It only means that a party cannot evade producing material by placing it in his or her attorney’s control. Otherwise, a responding party’s attorney would be tasked with investigating the case for the opposing party.

8 (N.D. Fla. Feb. 7, 2019) (quoting *In re Auction Houses Antitrust Litig.*, 196 F.R.D. 444, 445 (S.D.N.Y. 2000)); see also *T. Rowe Price*, 174 F.R.D. at 43. As summarized in *Flagg v. City of Detroit*, 252 F.R.D. 346 (E.D. Mich. 2008), control exists: (1) where contractual provisions “confer a right of access to the requested materials”;³ (2) where the information is in the possession of the party’s agent, such as the party’s attorney; (3) where the information is in possession of the party’s officers or employees; and (4) where the party has “authority and ability to obtain” the information from a nonparty to the action.

Id. at 353-54 (internal citations omitted). “If a party cannot provide the requested information, it must state under oath that it is unable to provide the information and set forth the efforts used to

obtain the information.” U.S. ex rel. Martino-Fleming, 332 F.R.D. at 7 (citing Kaneka, 2016 WL 11266869, at *8); see also Maurer, 2019 WL 3890924, at *4. King did not do so when responding to Merrill’s interrogatories.

King simply stated that he did not know the answers and explained, perhaps, why he did not know. He did not state whether he used any efforts to obtain responding information from 3 MDOC Policy Directive 02.01.102 does not confer a contractual right of access to the information sought. Even if the policy creates a contractual obligation, it only requires MDOC employees to cooperate with the Office of Legal Affairs and the Department of the Attorney General in defense of a lawsuit.

It does not give employees the right to MDOC files or materials. 9 sources within his control. While King, in fact, may still not have been able to answer the subject interrogatories even after engaging in such efforts—which his responses and arguments in response to Merrill’s objections suggest would have been the case—it was error to not require him to supplement his answers to confirm that reasonable efforts were made to respond.

Thus, the Court will require King to supplement his answers, and to first engage in a reasonable inquiry to obtain information necessary to answer if he has not done so already. Objection No. 2 Medical Records Magistrate Judge Altman concluded that Merrill’s motion to compel with respect to his medical records was resolved based on the parties’ agreement that MDOC would produce Merrill’s remaining records upon receipt of the applicable subpoena(s) from Merrill.

Merrill asserts that MJ Altman incorrectly stated that there was an agreement among the parties to produce the records once a subpoena issued. Merrill believes that he should not need to serve a subpoena for Part Two of his medical records, when a subpoena was not needed to obtain Part One. But simply because previous documents were produced without a subpoena does not show that Magistrate Judge Altman’s conclusion was clearly erroneous or contrary to law.

10 Agreements and Documents re: Indemnification Magistrate Judge Altman denied Merrill’s motion to compel Defendants’ production of “all agreements and other documents discussing or providing indemnification to the Defendants in this lawsuit” because defense counsel stated at the motion hearing that Defendants do not have any indemnification agreements in their possession, custody, or control.

(ECF No. 102 at PageID.2250.) Magistrate Judge Altman further indicated that defense counsel’s signature on the disclosures certifies that “it is complete and correct as of the time it is made[,]” and that “[o]nce a party has signed a response stating there is nothing more to disclose, the Court cannot compel that party to provide information they did not have nor compel production of documents that do not exist.” (Id. (quoting Roby v. Bloom Roofing Sys., Inc., No. 22-cv-10622, 2023 WL 373603, at *1 (E.D.

Mich. Jan. 24, 2023).) However, in their signed response to Merrill’s RFP 4, Defendants did not claim that they did not have any indemnification agreements in their possession, custody, or control. Instead, they objected to the request based on relevance, proportionality, and attorney-client privilege. (See ECF No. 94-4 at PageID.2129.) These seem to be impermissible boilerplate objections.

See, e.g., *Wesley Corp. v. Zoom T.V. Prods., LLC*, No. 17-10021, 2018 WL 372700, at *4 (E.D. Mich. Jan. 11, 2018). As Magistrate Judge Altman indicated in her decision, indemnification agreements may be relevant and are discoverable.⁴ (ECF No. 102 at PageID.2249.)

Moreover, Merrill’s request was not limited to agreements. He also sought any “documents discussing or providing indemnification to the Defendants in this lawsuit.” (See *id.* at PageID.2128.) Thus, the Court will compel Defendants to produce any agreements or documents discussing or providing indemnification to Defendants in this lawsuit—which includes agreements or documents in the control of their counsel—subject to any legitimate grounds for their nondisclosure.

If, in fact, no agreements or documents are responsive to Merrill’s request, Defendants shall provide an amended, signed response, saying so. When responding, Defendants are reminded that “control” is “broadly construed.” *Mich. Bricklayers & Allied Craftworkers Health Care Fund v. DiPonio Constr. Co.*, No. 09-cv-14007, 2010 WL 11703427, at *4 (E.D. Mich. June 7, 2010) (citing *Scott v. AREX, Inc.*, 124 F.R.D.

39, 41 (D. Conn. 1989)). Courts interpret Rule 34 as requiring production where the party “has the right, authority, or practical ability to obtain the documents from a non-party to the action.” *Chicago Ins. Co. v. Wiggins*, No. 02-cv-73801, 2005 WL 8154397, at *2 4 Producing any agreements or documents does not appear overly burdensome or unproportional, nor is it likely that they are protected by attorney-client privilege.

12 (E.D. Mich. 2005) (quoting *Prokosch v. Catalina Lighting, Inc.*, 193 F.R.D. 633, 636 (D. Minn. 2000) (quoting *Bank of N.Y. v. Meridien BIAO Bank Tanzania Ltd.*, 171 F.R.D. 135, 146 (S.D.N.Y. 1997))). “Important factors to be considered in deciding whether a party has the practical ability to obtain access to documents in the possession of a non-party include the existence of cooperative agreements between the responding party and the non-party, the extent to which the non-party has a stake in the outcome of the litigation, and the non-party’s history of cooperating with document requests.” *Gross v. Lunduski*, 304 F.R.D.

136, 142 (W.D.N.Y. 2014) (citing *Alexander Interactive, Inc. v. Adorama, Inc.*, No. 12 Civ. 6608, 2014 WL 61472, at * (S.D.N.Y. Jan. 6, 2014)) (ellipsis and internal quotation marks omitted); see also *Dreger v. KLS Martin LP*, No. 2:20-cv-3814, 2023 WL 532012, at *9 (S.D. Ohio Jan. 27, 2023) (quoting *Gross*, 304 F.R.D. at 142).

In Gross, for example, the district court found that a history of cooperation demonstrated the nonparty state correctional agency's willingness to produce documents required for the defense of its correctional officers. 320 F.R.D. at 143. Docket Sheets for Arbitrations or Administrative Proceedings, Job Descriptions, Transfer/Ride Out Sheets Magistrate Judge Altman denied Merrill's motion to compel production of these documents, concluding that if Defendants "do not have copies... on hand...

Merrill is equally able to and therefore must obtain these documents from 13 elsewhere." (ECF No. 102 at PageID.2251.) As discussed above, however, Defendants are not excused from producing documents simply because they are not "on hand." Moreover, except for the docket sheets of court cases involving King and/or Cook through PACER, it is not apparent that Merrill has access to the requested materials, or at least that these materials are as readily available to him as they are to Defendants.

For example, it is unclear where Merrill could identify arbitration or administrative proceedings where King and/or Cooks were named. Defendants may not have the docket sheets for those proceedings, but information is within their control as to whether they were parties to such proceedings, and, if so, when, and in what forum.

Thus, Defendants must inquire whether documents responsive to the RFPs remaining in dispute are within their control and, if so, produce them to Merrill. Conclusion For the reasons set forth above, the Court affirms Magistrate Judge Altman's conclusion that Defendants must consult with their experts as part of the reasonable inquiry required when responding to Merrill's requests for admission.

The Court also affirms Magistrate Judge Altman's finding that Merrill's motion to compel, to the extent he seeks production of his remaining medical records, has 14 been resolved based on Defendants' agreement to produce the records upon receipt of the necessary subpoena(s).

To the extent Magistrate Judge Altman held that Defendants do not need to engage in a reasonable inquiry and seek information or documents within their control before responding to Merrill's interrogatories or requests for production of documents, such a conclusion was incorrect. Defendants must engage in a reasonable inquiry, as discussed in this decision, and supplement their responses as appropriate.

SO ORDERED. s/ Linda V. Parker LINDA V. PARKER U.S. DISTRICT JUDGE Dated: February 2, 2026 I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, February 2, 2026, by electronic and/or U.S. First Class mail. s/Aaron Flanigan Case Manager 15

Retrieved from lawtools.ai · <https://lawtools.ai/cases/federal/united-states-district-court-for-the-eastern-district-of-mic/2026/christopher-scott-merrill-v-mark-king-mark-cooks-stacy-2bywvobk>