

IN THE DISTRICT COURT OF THE UNITED STATES
EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL MILLER

Plaintiff,

v.

COUNTY OF LANCASTER, *et al.*,

Defendants.

Civ. No.: 5:24-cv-05338

Judge Joseph F. Leeson, Jr.

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF’S MOTION TO
COMPEL DISCLOSURE OF REPRESENTATION ARRANGEMENTS OR,
IN THE ALTERNATIVE, FOR LEAVE TO CONDUCT LIMITED
DISCOVERY**

I. INTRODUCTION

Plaintiff Michael Miller respectfully submits this memorandum in support of his motion to compel disclosure regarding the representation of individual-capacity Defendants, or alternatively, for narrowly tailored discovery limited to that issue. The motion arises from unresolved questions of public funding, conflict of interest, and structural fairness in the defense of this action. This motion addresses a fundamental breach of the adversarial process: Plaintiff was denied notice, discovery, and a fair opportunity to respond before the Court entered judgment

based on undisclosed assumptions, unified defense strategies, and arguments not briefed by individual Defendants.

Plaintiff has no access to the basic structural facts surrounding defense arrangements due to the Court's sua sponte resolution of all claims at the pleadings stage, without conversion under Rule 12(d), a hearing, or an opportunity to conduct discovery. This motion seeks narrowly tailored procedural transparency to address that gap.

II. FACTUAL BACKGROUND

Plaintiff filed this civil rights action under 42 U.S.C. § 1983, asserting twelve claims against County of Lancaster and five County officials in their individual capacities. The claims stem from alleged constitutional violations in connection with public access to election records and retaliatory conduct by County officials. All Defendants, including those sued in their personal capacities, are represented by a single attorney employed by County's outside law firm, McNeese Wallace & Nurick LLC.

On March 7, 2025, the Court dismissed all federal claims without permitting discovery, a hearing, or conference. The dismissal was based on a collective Rule 12 motion filed by County's attorney, which did not distinguish between defendants or address the individualized elements of personal-capacity claims.

Plaintiff remains without any formal disclosure regarding who is funding the defense or whether the representation of individual Defendants creates a conflict of interest.

Plaintiff has attempted to seek concurrence from opposing counsel pursuant to Local Rule 7.1(g). Counsel does not concur in the motion.

III. LEGAL STANDARD

Under Federal Rule of Civil Procedure 26(d)(1), the Court may authorize discovery prior to a Rule 26(f) conference when appropriate. The Court also has inherent authority to supervise the conduct of counsel and ensure transparency and fairness in adversarial proceedings. See *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991). Requests for limited, targeted discovery are granted where they seek clarification of threshold matters that implicate standing, jurisdiction, or structural fairness.

IV. ARGUMENT

A threshold observation must be made: the Court's ruling substituted for arguments never personally raised by any individual-capacity Defendant. McNeese Wallace & Nurick LLC submitted a consolidated defense on behalf of all parties, but no individual Defendant answered with claim-specific, fact-based arguments,

declarations, or defenses. In this context, County's outside counsel functionally replaced the absent Defendants procedurally, and the Court assumed the role of legal surrogate by resolving contested legal and factual matters sua sponte. This creates a breakdown in adversarial structure of the type disapproved in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982), and *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009).

A. Plaintiff Has Been Denied Access to Critical Information Concerning Defense Arrangements

This litigation involves claims against individual government officials for ultra vires and retaliatory conduct. Such claims are personal in nature. See *Hafer v. Melo*, 502 U.S. 21, 25 (1991). Yet the Court adjudicated these claims without any record of whether the Defendants are being represented and funded individually or collectively.

Because all Defendants are represented by County's counsel, and because the defense has proceeded with undifferentiated argumentation, the possibility of a conflict of interest or misuse of public funds is manifest. Plaintiff cannot meaningfully test defenses, assess Monell liability, or challenge agency if the underlying structural facts of representation and funding remain undisclosed.

B. The Structure of Representation Raises Appearance of Impropriety and Due Process Concerns

The unified defense posture—paired with the Court’s sua sponte adoption of arguments not separately raised by Defendants—creates a serious risk of structural bias. Where litigation is resolved in favor of officials using public funds to shield personal liability, the appearance of impartiality is compromised. See *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 884 (2009); *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010) (judgment rendered without procedural compliance may be void under Rule 60(b)).

This risk is amplified when no opportunity for discovery is granted and the Court converts the proceeding into a de facto summary judgment ruling without conversion or adversarial process. See *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429–431 (1982); Fed. R. Civ. P. 12(d).

C. Limited Discovery or Disclosure Is Appropriate, Proportional, and Necessary

Plaintiff seeks either formal disclosure or leave to serve one interrogatory and one document request. This is a minimal burden and squarely within the scope of Rule 26(d)(1). The request does not seek merits discovery but instead aims to

clarify whether County is financing or controlling the defense of individual-capacity claims, and whether conflict waivers or indemnity arrangements exist.

Such information is highly material to Plaintiff's pending post-judgment motions, potential Rule 60(b) relief, and any appellate review. Absent this information, Plaintiff cannot meaningfully evaluate the structural basis of the dismissal or raise a full and fair record for appeal.

D. Ethical and Judicial Oversight Considerations Further Support Relief

If County is defending individual-capacity claims without statutory indemnity or judicial approval, that may constitute a misuse of public funds and a breach of fiduciary duty. Simultaneous representation of County and individual Defendants may violate Rules 1.7 and 1.8(f) of the Pennsylvania Rules of Professional Conduct.

Further, the Court's failure to disclose whether it reviewed conflict materials, indemnification agreements, or defense authorizations raises concerns under Canon 2 and Canon 3(C)(1) of the Code of Conduct for United States Judges. Plaintiff respectfully reserves all rights under 28 U.S.C. § 351 and related provisions.

If this structural conflict has been reviewed in chambers without disclosure to Plaintiff, or if the Court has accepted joint representation assumptions without

confirming waiver or indemnity, those omissions themselves risk undermining impartiality. Such undisclosed procedural conditions would also materially prejudice Plaintiff's rights under Rule 60(b)(6) and violate the principles of *Espinosa*.

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant the motion to compel, or in the alternative, authorize narrowly tailored discovery limited to the issue of representation arrangements. These structural defects, if unaddressed, risk undermining the integrity of the judicial process and impairing Plaintiff's fundamental right to a fair adversarial proceeding.

Where judicial procedures have obscured structural irregularities, due process demands disclosure before judgment is allowed to stand. See *Espinosa*, 559 U.S. at 271; *Caperton*, 556 U.S. at 884.

Respectfully submitted,

/s/ Michael Miller

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Dated: March 26, 2025

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all registered parties, including counsel for Defendants:

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Respectfully Submitted,

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Dated: March 26, 2025