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United States District Court,
S.D. Ohio, Eastern Division.

J.P., and all others similarly situated, et al.,
Plaintiffs,
v.
Bob TAFT, et al., Defendants.

No. C2-04-692. | March 15, 2006.

Attorneys and Law Firms

Jennifer M. Kinsley, Sirkin Pinales & Schwartz, Cincinnati, OH, Kimberly Brooks Tandy, Covington, KY, Stephen L. Pevar, American Civil Liberties Union Foundation, Hartford, CT, for Plaintiffs.

Sharon A. Jennings, Joseph M. Mancini, Philip A. King, Ohio Attorney General, Geoffrey J. Moul, Murray Murphy Moul & Basil, Columbus, OH, Mary Anne Reese, Attorney General of Ohio, Cincinnati, OH, for Defendants.

Opinion

OPINION AND ORDER

MARBLEY, J.

I. INTRODUCTION

***1** This matter is before the Court on the following motions by Plaintiffs, prisoners at various Ohio Department of Youth Services ("ODYS") juvenile correctional facilities: (1) Motion to Alter or Amend this Court's September 29, 2005 Opinion and Order[1] pursuant to Federal Rule of Civil Procedure 59; and (2) Motion to Table the Court's Preliminary Pretrial Order. For the reasons set forth herein, Plaintiffs' Rule 59 Motion is DENIED; Plaintiffs' Motion to Table the Court's Preliminary Pretrial Order is MOOT.

II. STATEMENT OF FACTS

A. Background

ODYS "is the legal custodian for juvenile offenders age 10-21 who have been adjudicated delinquent as a result of committing felony violations." *See* Pl.'s Ex. A. ODYS operates eight juvenile correctional facilities-Circleville Juvenile Correctional facility, Mohican Juvenile Correctional facility, Cuyahoga Hills Juvenile Correctional Facility, Scioto Juvenile Correctional Facility, Ohio River Valley Juvenile Correctional Facility, Indian River Juvenile Correctional Facility, Freedom Center, and the Marion Juvenile Correctional Facility-six parole offices, and contracts with a private sector provider for services. *Se id.* Further, "[a]t any given time, [Ohio] DYS has approximately 1,800 youth in its custody in the correctional facilities." *Id.*

In 1992, the Sixth Circuit Court of Appeals ruled that juvenile offenders require the assistance of lawyers in order to have meaningful access to the courts because juvenile offenders cannot make effective use of legal materials by themselves. *See John L. Adams,* 969 F.2d 228, 233 (6th Cir.1992). Nonetheless, this right to assistance of counsel has been narrowly interpreted to mean that juvenile offenders are not entitled to legal assistance on "general civil matters arising solely under state law." *Id.* Moreover, the right to assistance of counsel is limited to "the preparation and the filing of the complaint." *See Knop v. Johnson,* 977 F.2d 996, 1005-07 (6th Cir.1992); *Bee v. Utah State Prison,* 823 F.2d 397 (10th Cir.1987); *Nordgren v. Milliken,* 762 F.2d 851, 855 (10th Cir.1985); *Ward v. Kort,* 762 F.2d 856 (10th Cir.1985).

B. Procedural History

In July 2004, four youth (J.P., S.J., H.H.[2] and D.B.) filed a proposed class action suit in federal court. *See* Pls.' Original Complaint. Plaintiffs alleged that the Defendants violated the First, Sixth, and Fourteenth Amendments of the United States Constitution and corresponding provisions of the Ohio Constitution by denying access to the courts for juveniles committed to ODYS as juvenile delinquents or serious juvenile offenders. *See J.P., et al.,* 2005 WL 2405993, at *1. Plaintiffs requested declaratory and injunctive relief, asking the Court to declare that Defendants' actions were unconstitutional and to require Defendants to provide them with access to attorneys. *See id.*

On January 7, 2005, Defendants filed their First Motion for Summary Judgment in which they argued that the four

Plaintiffs named in the Complaint had failed to exhaust their administrative remedies and, therefore, lacked standing to challenge Defendants' legal assistance program. *See* Defs.' Motion for Summary Judgment. Plaintiffs filed a response to this motion. *See* Pls.' Opposition to Motion for Summary Judgment.

***2** Taking Plaintiffs' pending claims into account, Defendants made extensive changes to the ODYS legal assistance program, and, on January 12, 2005, they filed their Second Motion for Summary Judgment arguing that the four Plaintiffs named in the Complaint lacked standing to sue. *See* Defs.' Second Motion for Summary Judgment.[3] Shortly thereafter, Plaintiffs served Defendants with a written discovery request in an effort to "probe the content, scope, and operation of [the Defendants'] new program." *See* Pls.' Motion at 5; Pls.' Ex. A. Plaintiffs requested that Defendants produce the contract between ODYS and the program attorneys so that Plaintiffs could "assess the scope of [the attorneys'] duties," as well as a description of any and all legal services the new ODYS legal services program was to provide in order to determine whether it in fact met the requirements of the law. Pls.' Motion at 5. In response, Defendants filed a motion to stay all discovery, which the Court subsequently granted. *Id.*

Defendants filed their Third Motion for Summary Judgment on August 1, 2005 in which they reiterated their previous assertions and insisted that the two named Plaintiffs who had been added to the Amended Complaint lacked standing. *See* Pls.' Motion at 5-6; Defs.' Third Motion for Summary Judgment. In response, Plaintiffs, once again, sought to "engage in discovery designed to uncover the content, scope, and operation of Defendants' new legal assistance program, and served Defendants with a *second* request for production of documents along with a first set of interrogatories. *See* Pls.' Motion at 6; Pls' Reply to Defs.' Response to Pls.' Motion for Extension of Time. In making their discovery request, Plaintiffs sought both an extension in the period of discovery initially set in the Court's preliminary pretrial order and an extension of time to respond to Defendants' Third Motion for Summary Judgment. *See* Pls.' Motion at 6; Pls.' Motion to Extend Discovery; Pls' Motion for Extension. To date, ODYS has still neither produced the requested materials nor answered any of the Plaintiffs' interrogatories. *See* Pls.' Motion at 6.

On February 7, 2005, the Court held a telephonic hearing and ruled, *inter alia,* that Plaintiffs could not engage in any discovery regarding Defendants' new legal assistance program, issuing a protective order to that effect. *See* Pls.' Motion at 1. The Court held that before any such discovery could occur, the parties and the Court needed to address the Defendants' questions of jurisdiction, standing, and the exhaustion of administrative remedies. *Id.*

In response, Plaintiffs filed a second amended complaint in March 2005. *See* Pls.' Amended Complaint (the "Second A.C."). Shortly thereafter, Defendants filed a motion requesting disqualification of Plaintiffs' Attorney, Kim Brooks Tandy for causing herself to become a material witness in the case. *See* Defs.' Motion to Disqualify Plaintiffs' Counsel.

***3** On September 29, 2005, this Court granted Defendants' Second Motion for Summary Judgment based on the Court's lack of subject matter jurisdiction to entertain the Plaintiffs' claims. *See J.P., et al.,* 2005 WL 2405993, at *19.[4] In so holding, the Court also denied as moot Defendants' First Motion for Summary Judgment, and Defendants' Motion to Disqualify Kim Brooks Tandy as Plaintiffs' Counsel. *Id.* Finally, the Court also dismissed, without prejudice, Plaintiffs' Motion for Class Certification, noting that Plaintiffs may have an opportunity to re-file the motion following the Court's resolution of the Defendants' Third Motion for Summary Judgment. *Id.*

Shortly thereafter, Plaintiffs filed the motions currently at issue in this case-(1) Motion to Table the Court's Preliminary Pretrial Order, and (2) Rule 59 Motion to Alter or Amend the Court's September 29, 2005 Opinion and Order.[5] Plaintiffs contend that the Court unfairly and prematurely granted summary judgment for the Defendants without first allowing the Plaintiffs to conduct discovery concerning what they deem to be "material issues of fact."[6] *Id.* at 3. Further, Plaintiffs assert that the Court should promptly rule on their Class Certification motion as filed and delay ruling on the Defendants' Second Motion for Summary Judgment pending discovery and the submission of additional briefings by Plaintiffs. *Id.*[7] Defendants, on the other hand, counter that the Court should deny Plaintiffs' motions because: (1) the three named plaintiffs have already "[r]eceived full discovery concerning themselves and their own claims"-including discovery about the legal assistance program as it pertains to them; and (2) even if the discovery Plaintiffs seek were to create the issues of fact they describe, "these issues are not material to the three named Plaintiffs' own claims and thus should not warrant disturbing the Court's findings and judgment." Defs.' Memo Contra at 2-3. The Court must now analyze both parties' arguments to determine whether to reconsider its decision to in *J.P., et al. See* 2005 WL 2405993, at *19.

III. STANDARD OF REVIEW

A. Rule 59 Motion

Rule 59 allows parties to move for a court to alter or amend a previously issued judgment. *See* FED. RULE CIV. PRO. 59.[89] Generally, there are three situations which justify reconsideration under Rule 59(e): "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or to prevent a manifest injustice." *Dualite Sales & Serv., Inc. v. Moran Foods, Inc.,* 2005 WL 2372847, at *1 (S.D.Ohio Sept.26, 2005) (citing *In re Continental Holdings, Inc.,* 170 B.R. 144, 146 (Bankr.N.D.Ohio 1992)). Nevertheless, a "Rule 59(e) motion may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment." *See Brown v. City of Syracuse,* 2005 WL 2033492, at *1-2 (N.D.N.Y. Aug.17, 2005) (citing 11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, FED. PRAC. & PRO. § 2810.1 (2d ed.1995) (footnotes omitted)).

IV. ANALYSIS

A. Motion to Table the Court's Preliminary Pretrial Order

***4** Before reaching the merits of Plaintiffs' Motion to Alter and Amend the Court's previous judgment, the Court will proceed with its analysis of Plaintiffs' Motion to Table the Court's Preliminary Pretrial Order. On December 13, 2004, the Court issued a preliminary pretrial order (the "PPO") outlining the schedule deadlines for the case sub judice. *See* Preliminary Pretrial Order. Pursuant to the PPO, the disclosure of both parties' experts was to be completed by August 1, 2005, discovery was to close September 1, 2005, and both sides were ordered to file all of their dispositive motions by October 1, 2005.

Rather than adhering to the discovery schedule set forth in the PPO, prior to the commencement of formal discovery, Defendants filed three separate motions for summary judgment. *Id.* at 2.[10] Nonetheless, because the Court issued a decision granting Defendant's Second Motion for Summary Judgment on September 29, 2005, Plaintiffs' Motion to Table the Court's Preliminary Pretrial Procedure is now MOOT.

B. Plaintiffs' Motion to Alter or Amend this Courts' Previous Judgment

As presented above, on October 10, 2005, Plaintiffs timely filed a Rule 59 motion requesting that the Court amend its September 29, 2005 order by "withdrawing its decision, both as to summary judgment and as to class certification." *See* Pls.' Motion at 1. Plaintiffs also request that the Court promptly rule on the class certification motion as it was filed and "delay ruling" on Defendants' dispositive motions until *after* Plaintiffs have had a fair opportunity to engage in formal discovery. *Id.* at 3. The Plaintiffs contend that, "by preventing the Plaintiffs from engaging in discovery on material issues of fact before deciding those very issues against them," and "by failing to adjudicate the Rule 23 motion before the Rule 56 motion" the Court significantly prejudiced the Plaintiffs, effectively denying them the opportunity for a fair trial. *See id.*

1. Adequate Discovery

First, Plaintiffs argue that by issuing the February 7, 2005 protective order denying them the opportunity to conduct discovery on the Defendants' newly instituted legal assistance program, the Court effectively prevented them from determining whether that new program actually conforms with juvenile offenders' right to effective assistance of counsel. *See* Pls.' Motion at 24.

In considering the Plaintiffs' motion, the Court begins with the proposition that "[c]ivil litigants are entitled to a *fair trial,* not a perfect one ... [A] new trial will not be ordered unless there was an error that caused some prejudice to the substantial rights of the parties." *See Jacobson v. Nat'l RR Passenger Corp.,* 2001 WL 775585, at *1 (N.D.Ill. July 10, 2001) (quoting *Wilson v. Groaning,* 25 F.3d 581, 584 (7th Cir.1984)). The Court is mindful that evidentiary rulings are within the trial court's discretion, and accordingly, courts have held that "a party seeking a new trial[11] based on alleged erroneous evidentiary rulings bears a 'heavy burden.' " *Id.* As the Seventh Circuit has put it, "a trial judge's discretionary rulings will be reversed only if they 'strike us as wrong with the force of a five-week-old, unrefrigerated dead fish." *See id.* (citing *Rodriguez v. Anderson,* 973 F.2d at 552 n. 3 (quotations omitted)).

***5** Despite the precedent under which Plaintiffs must meet a substantial burden to show that the Court's discovery ruling was clearly erroneous, Plaintiffs contend that their case more closely resembles others in which courts have reversed previous decisions granting summary judgment when the non-movants had not been afforded adequate discovery. *White's Landing Fisheries, Inc. v. Buchholzer,* 29 F.3d 229, 231-32 (6th Cir.1994) (reversing and remanding the district court's decision granting summary judgment for defendants because the district court stayed all discovery only six days after the plaintiffs had submitted their first discovery request,

effectively preventing *any* discovery from taking place); *Costello, Porter, Hill, Heisterkamp & Bushnell v. Providers Fidelity Life Ins., Co.,* 958 F.2d 836 (8th Cir.1992) (finding that the trial court's decision to grant defendants' motion for summary judgment before allowing defendants to conduct significant discovery was premature, and reversing and remanding the case). According to Plaintiffs,

> [t]he issue is not whether Defendants claim repentance and reform; the issue is whether they have met their burden of proving with assurance that: (1) Defendants have properly assessed what it would take to provide adequate, effective, and meaningful access to the courts for all 2,400 members of the putative class; (2) they have hired and trained sufficient staff to meet the anticipated demand; (3) the program is working as intended; and (4) the changes are irrevocable and the harms caused by the old system cannot be repeated.

Pls.' Motion at 24.

Nonetheless, both of the cases upon which Plaintiffs rely were on appeal and did not involve Rule 59 motions. Further, while it is true that there are times when a trial court may be in error in denying a party necessary discovery, it cannot be gainsaid that there are also times when courts are correct in deciding that further discovery would be superfluous. *See United States v. Miami Univ.,* 294 F.3d 797, 815-16 (6th Cir.2002) (finding that the district court did not abuse its discretion when it denied the defendant discovery before ruling on a motion for summary judgment because "additional discovery would not [have] aid[ed] in the resolution of those questions"); *City of Syracuse,* 2005 WL 2033492, at *2-3 (because plaintiff was "dilatory" in seeking discovery of the files for which he had requested a discovery extension, the court denied both plaintiff's cross-motion for additional time for discovery and plaintiff's motion for reconsideration of the part of the court's Memorandum-Decision and Order ("MDO") in which it granted defendant's motion for summary judgment).

In this case, Plaintiffs rely heavily on the argument that before altering the ODYS legal assistance program, the Defendants had engaged in at least ten years of persistent illegal conduct. Because Plaintiffs' arguments in their Second A.C. are based entirely on Defendants' *past* illegal conduct, the Court is persuaded that discovery on the Defendants' *new* legal assistance program would be unnecessary.

***6** Plaintiffs also argue that even if the Defendants mooted their suit by changing the ODYS legal assistance program, the Defendants still failed to meet their burden of proving that the past harm will not recur. Though the Court concedes that Defendants bear the burden of proving that the alleged harm will not recur, because ODYS is a government entity, the burden is lighter than it would be for private parties. *See J.P., et al.,* 2005 WL 2405993, at *12 ("[C]essation of the allegedly illegal conduct by government officials has been treated with more solicitude by the courts than similar action by private parties ... self-correction provides a secure foundation for a dismissal based on mootness so long as it appears genuine."); *Mosley v. Hairston,* 920 F.2d 409, 415 (6th Cir.1990) (noting that there is a "difference in the way voluntary cessation of illegal activities is treated when the offending parties are government officials"). In *J.P., et al.,* based on a full record, this Court already held that Defendants met their burden of showing that there was "no reasonable expectation that the denial of access to an attorney will recur." *See* 2005 WL 2405993, at *12-13.

Though the Court understands Plaintiffs' frustration at their inability to gather evidence to support their case, because a Rule 59(e) motion may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment, Plaintiffs cannot merely reassert the same previously infirm arguments. *See City of Syracuse,* 2005 WL 2033492, at *2-3. Moreover, Plaintiffs have not set forth any facts showing that there was an intervening change in controlling law, new evidence not available at trial, or a clear error of law in the District Court's decision. *See Dualite Sales & Serv., Inc.,* 2005 WL 2372847, at *1 (setting forth the situations in which courts generally grant a party's Rule 59(e) motion to alter or amend a previously issued judgment). As such, on the facts presented, the Court finds Plaintiffs' claims as to the Court's decision to limit discovery to be without merit.

2. Class Certification

Plaintiffs also argue that because they filed their Motion for Class Certification under Rule 23(b)(2) long before ODYS filed its first Motion for Summary Judgment under Rule 56,[12] the Court should have adjudicated the issue of class certification before considering the issue of summary judgment. *See* Pls.' Reply at 8. Further, Plaintiffs opine that the failure to do so resulted in "actual prejudice" which the Court could only now eliminate by withdrawing its previously issued order and adjudicating the Rule 23 motion on its merits. *See id.* Defendants, however, aver that Plaintiffs' motion is nothing but a "thinly-disguised effort" to seek out other Plaintiffs who

can reinvigorate the lawsuit. Defs.' Opposition at 13. Defendants write, "... it is clear that the object of Plaintiffs' request for further discovery is a fishing expedition done in speculation that there is some inadequacy in the legal assistance program overall, so that Plaintiffs might identify some other members of [a] putative class who could become named plaintiffs and continue this litigation...." *Id.*

***7** Considering the arguments presented by both sides, the law augurs in favor of the Defendants. *See Thomas v. Moore USA, Inc.,* 194 F.R.D. 595, 598 (S.D.Ohio Sept.23, 1999) (citing *Gen. Tel. Co. v. Falcon,* 457 U.S. 147, 161, 102 S.Ct. 2364, 72 L.Ed.2d 740 (1982) (recognizing that "class determination generally involves considerations that are enmeshed in factual and legal issues comprising the plaintiff's cause of action ...")). In *Thomas v. Moore,* plaintiffs, former employees, brought an antitrust suit against their employers for engaging in collusive conduct by allegedly agreeing not to hire or solicit one another's employees. *See* 194 F.R.D. at 595. On plaintiffs' motion for class certification, the court held that "deferral of a class certification motion until after defendants' summary judgment motion was appropriate." *See id.* at 602. The court relied on the *Thompson v. County of Medina, Ohio,* where the Court found that, "[i]t is reasonable to consider a Rule 56 motion first [(before ruling on a motion for class certification)] when an early resolution of a motion for summary judgment seems likely to protect both parties and the court from needless and further litigation." ' *Id. (citing Thompson v. County of Medina, Ohio,* 29 F.3d 238, 241 (6th Cir.1993)); *see also Marx v. Centran Corp.,* 747 F.2d 1536, 1552 (6th Cir.1984) (rejecting the proposition that "in all cases the determination of the propriety of a class action must precede any consideration of the merits"); *Gwirtz v. Ohio Educ. Ass'n,* 887 F.2d 678, 683 (6th Cir.1989) ("We also agree that the district court did not err in refusing to rule on the plaintiff's motion for class certification ... and given our affirmance of the decision of the district court in favor of the [defendant], we decline to order the district court, as the plaintiffs seek, to now certify the class."). At this point in the litigation, the Court is persuaded that Plaintiffs have failed to assert any justification for the Court to reconsider its decision in *J.P. Taft, et al., See* 2005 WL 2405993, at *19.

V. CONCLUSION

For the foregoing reasons, Plaintiffs' Motion to Alter or Amend this Court's September 29, 2005 Opinion is DENIED, and Plaintiffs' Motion to Table the Court's Preliminary Pretrial Order is MOOT.

IT IS SO ORDERED.

Footnotes

1 *See J.P. & all others similarly situated, et al. v. Taft, et al.,* 2005 WL 2405993 (S.D.Ohio Sept.29, 2005) (Marbley, J.) (granting Defendants' Second Motion for Summary Judgment for lack of subject matter jurisdiction; denying as moot Defendants' First Motion for Summary Judgment and Defendants' Motion to Disqualify Kim Brooks Tandy as Plaintiffs' Counsel; and dismissing, without prejudice, Plaintiffs' Motion for Class Certification).

2 On July 7, 2005, Plaintiff H.H. voluntarily dismissed her claim against Defendants.

3 According to the Defendants, the Plaintiffs lacked standing because they,
... failed to demonstrate that they have suffered any litigation-related injury as a result of the [D]efendants' actions. *Lewis v. Casey,* 518 U.S. 343, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996); *Pilgrim v. Littlefield,* 92 F.3d 413 (6th Cir.1996). No violation of the right of access to the courts occurs in the absence of injury. This means that, without evidence that the [D]efendants prevented the [P]laintiffs from filing suit on their underlying claims or rendered their access to the courts ineffective or meaningless, [P]laintiffs have not shown that their right of access to the courts has been violated. *Christopher v. Harbury,* 536 U.S. 403, 122 S.Ct. 2179, 153 L.Ed.2d 413 (2002); *Swekel v. City of River Rouge,* 119 F.3d 1259 (6th Cir.1997).
Defs.' Second Motion for Summary Judgment at 2.

4 Though Plaintiffs allege that they were prevented from obtaining meaningful access to the courts because Defendants failed to provide them with access to legal counsel, the court wrote, "[a]fter this case was filed, however, Defendants did in fact provide counsel to each of the three Plaintiffs named in the original Complaint (citations omitted). Thus, Defendants voluntarily ceased their allegedly unconstitutional actions, *i.e.,* preventing meaningful access to the courts by denying Plaintiffs access to legal counsel." *See J.P., et al.,* 2005 WL 2405993, at *12.

5 The Plaintiffs filed their Motion to Table the Court's Preliminary Pretrial Order on September 27, 2005, before the Court had issued its decision in *J.P., et al., See* 2005 WL 2405993, at *19. The Plaintiffs filed their Motion to Alter or Amend the Court's Judgment on October 10, 2005. *See* Pls.' Motion at 1.

6 Plaintiffs argue that "at least three material facts [are] in genuine dispute": (1) whether Defendants have, in fact, designed a constitutionally adequate legal assistance program and have provided a sufficient number of attorneys and other legal staff to provide access to the courts to each and every child who has a valid conditions claim; (2) whether Defendants have adequately trained their staff and contractors to properly implement this program even if the Defendants had designed an adequate legal assistance program; and (3) whether Defendants have demonstrated a persistent failure to provide children with court access in derogation of clearly established law, that Plaintiffs are entitled to the protection of injunctive relief to guard against recurrence. Pls.' Motion at 3.

7 Plaintiffs based their request on the following five facts: (1) after the lawsuit was filed challenging the constitutional adequacy of Defendants' legal assistance program, Defendants adopted an "entirely new and vastly different program"; (2) Plaintiffs served Defendants with a comprehensive request for document production to allow Plaintiffs to discover the content and scope of the new program, as well as whether the program was in fact operating as it was designed; (3) Defendants, however, refused to answer any of the foregoing discovery requests, and, instead, filed a motion to stay all discovery; (4) the Court held a telephonic hearing and ruled that the Plaintiffs could not engage in any discovery regarding Defendants' new legal assistance program until the Court had first addressed the jurisdictional and threshold questions of standing and exhaustion of administrative remedies raised by Defendants; and (5) despite the lack of formal discovery, on September 29, the Court granted summary judgment to Defendants stating: "Plaintiffs offer no evidence in their Memorandum in Opposition to Defendants' Second Motion for Summary Judgment that would tend to show the changes made the legal assistance program are in any manner deficient." *See* Pls.' Motion at 1.

8 Rule 59 states:
(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.
(b) Time for Motion. Any motion for a new trial shall be filed no later than 10 days after entry of the judgment.
(c) Time for Serving Affidavits. When a motion for new trial is based on affidavits, they shall be filed with the motion. The opposing party has 10 days after service to file opposing affidavits, but that period may be extended for up to 20 days, either by the court for good cause or by the parties' written stipulation. The court may permit reply affidavits.
(d) On Court's Initiative; Notice; Specifying Grounds. No later than 10 days after entry of judgment the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. When granting a new trial on its own initiative or for a reason not stated in a motion, the court shall specify the grounds in its order.
(e) Motion to Alter or Amend Judgment. Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.
See FED. RULE CIV. PRO. 59.

9 Rules 59(e) and 60(b) provide for different motions directed to similar ends, but Rule 59(e) generally requires a lower threshold of proof than 60(b). *See Brown v. City of Syracuse,* 2005 WL 2033492, at *1 (citing *Helm v. Resolution Trust Corp.,* 43 F.3d 1163, 1166 (7th Cir.1995)).

10 Defendants filed their First Motion for Summary Judgment on January 7, 2005, their Second Motion for Summary Judgment on January 12, 2005, and their Third Motion for Summary Judgment on August 1, 2005.

11 Though Plaintiff here seeks a Rule 59 Alteration of Judgment, not a "new trial," the Court finds that Plaintiffs *still* bear the same heavy burden of showing that the Court's evidentiary rulings were in error.

12 Plaintiffs filed their Motion to Certify Class on September 27, 2004. Defendants filed their Second Motion for Summary Judgment on January 12, 2005.