APPENDIX

App. 1a — Sixth Circuit order denying rehearing, September 23, 2026

App. 2a — Sixth Circuit panel decision, No. 25-2108

App. 3a — ECF 107, Rule 37 dismissal, November 26, 2025

App. 4a — Judgment

App. 5a — ECF 48, order denying appointment of counsel

App. 6a — ECF 9, pages with the "38 documented" and "numerous derogatory remarks" sentences, and dismissal of the non-Title VII claims

App. 7a — ECF 41, page with "numerous derogatory remarks"

App. 8a — ECF 1, complaint page containing the quoted sentence

App. 9a — Mandamus denial

App. 10a — ECF 95, PageID.1278, 1281, and 1282

App. 11a — 24-cv-11639 dismissal, caption and final page

Appendix

App. 1

No. 25-2108

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Sep 23, 2026
KELLY L. STEPHENS, Clerk

MICHAEL DEAN WILLIAMS,

Plaintiff-Appellant,

v.

CRYSTAL FLASH CO., et al.,

Defendants-Appellees.

ORDER

BEFORE: McKEAGUE, THAPAR, and MURPHY, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

(App. 1a)

App. 2

NOT RECOMMENDED FOR PUBLICATION

No. 25-2108

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Aug 5, 2026
KELLY L. STEPHENS, Clerk

MICHAEL DEAN WILLIAMS, Plaintiff-Appellant, v. CRYSTAL FLASH CO., et al., Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

ORDER

Before: McKEAGUE, THAPAR, and MURPHY, Circuit Judges.

Michael Dean Williams, proceeding pro se, appeals the district court's dismissal of his civil rights action for violating discovery rules and court orders, pursuant to Federal Rule of Civil Procedure 37. He moves this court for the appointment of counsel and for oral argument. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a)(2). - For the reasons that follow, we deny Williams's motions for counsel and oral argument and affirm the district court's judgment.

Williams sued his former employer, Crystal Flash Co., and three of its management employees—Craig Broekhuizen, Krinn Vandersloot, and Caitlin Kozal—alleging that they failed to protect him from months of harassment and assaults by a co-worker, Kenneth Walker, and conspired with the Michigan Department of Civil Rights to violate his civil rights. Williams, who is white, alleged that, over the course of 420 days, Walker, who is black, repeatedly assaulted and harassed him and that the defendants ignored his complaints and allowed the mistreatment to continue to protect Walker because of his race. Williams asserted race-based retaliation and

hostile-work-environment claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., Eighth and Fourteenth Amendments claims under 42 U.S.C. § 1983, and a criminal conspiracy claim under 18 U.S.C. § 241.

The district court granted Williams leave to proceed in forma pauperis and screened the complaint under 28 U.S.C. § 1915(e)(2)(B). The court dismissed Williams's claims under § 1983 and § 241 for failure to state a claim upon which relief may be granted but allowed his Title VII claims to proceed.

Before the district court scheduled an initial scheduling conference, Williams filed a slew of motions, including motions to amend the complaint, for summary judgment, and to reconsider the order dismissing his § 1983 and § 241 claims. On November 7, 2024, the district court denied most of the motions as procedurally improper or lacking in merit. The court advised Williams to familiarize himself with the court's local rules and the Federal Rules of Civil Procedure to give him "a better understanding of the litigation process."

On November 6, 2024, the district court held a status conference. The court instructed the parties to work together to devise a joint discovery plan, advised Williams to contact the Federal Pro Se Legal Assistance Clinic, and set a scheduling conference for November 20, 2024. Two days before the scheduling conference, the defendants submitted a discovery plan. They explained that, as the court had instructed, they had attempted to work with Williams on a joint discovery plan, but that Williams had refused to engage with defense counsel, telling him only that he did "not accept [the defendants'] scheduling." Before the second conference, the court contacted the Federal Pro Se Legal Assistance Clinic and learned that Williams had refused any assistance.

Williams failed to appear at the November 20 conference. Defense counsel advised the district court that Williams had told him that he would be moving for the appointment of counsel and that he wished to adjourn the scheduling conference until he obtained counsel, but no such motion had yet been filed. During the conference, Williams called the court, stating that he was confused about the time of the conference and that he could not attend because he had a doctor's appointment.

On November 21, 2024, the district court entered an order advising Williams that he must appear for all court proceedings and that he must notify the court in writing of any scheduling conflicts or adjournment requests. The court warned Williams that "any future failure to appear as scheduled may result in sanctions, up to and including an award of attorney's fees to defense counsel, and dismissal of his case for failure to prosecute." The court further warned that "failure to cooperate with defense counsel with respect to the discovery process or failure to comply with the Federal Rules of Civil Procedure or [the court's] local rules may also result in the imposition of sanctions." The court declined to appoint Williams counsel. The court entered a scheduling order that set deadlines for the exchange of initial disclosures and witness and exhibit lists and set a discovery cut-off date of June 2, 2025.

After entry of its order, the district court learned that the clerk had docketed Williams's motion for the appointment of counsel just before the scheduling conference. It therefore entered a separate order denying that motion in accordance with its previous ruling. Williams appealed that order and moved to stay the proceeding pending his appeal. He also appealed the November 7 order denying his motions. The court denied Williams's motion for a stay. And we dismissed both of Williams's appeals for lack of jurisdiction. *Williams v. Crystal Flash Co.*, No. 25-1186, 2025 U.S. App. LEXIS 8427, at *2 (6th Cir. Apr. 9, 2025); *Williams v. Crystal Flash Co.*, No. 24-2106, 2025 U.S. App. LEXIS 3137, at *3 (6th Cir. Feb. 10, 2025).

Williams continued to file various motions in the district court, including, among others, four motions to amend his complaint, a motion to voluntarily dismiss the individual defendants and then a motion to withdraw the motion for voluntary dismissal, motions for a change of venue, and motions for reconsideration of earlier rulings. Crystal Flash moved to compel discovery and to extend the post-discovery scheduling order dates. In their motion, Crystal Flash explained that, on April 21, 2025, it served discovery requests on Williams with a deadline of May 21, 2025. The day before the deadline, defense counsel contacted Williams to ask whether he would be able to comply with the deadline and to schedule his deposition. Williams advised that he did not intend to respond to Crystal Flash's discovery requests or appear for a deposition. Crystal Flash

(2-c)

confirmed that Williams had not responded to any of its discovery requests and had not served his initial disclosures or his witness and exhibit lists as required by the court's scheduling order.

The district court denied Williams's motions (except for his motion to withdraw his motion for voluntary dismissal) and granted Crystal Flash's motion to compel and to extend the scheduling order dates. Noting that Williams had filed 15 meritless motions and two frivolous appeals of non-final orders instead of engaging in discovery in accordance with its November 21 order, the court issued Williams a "final warning," advising him that "[f]ailure to comply with [its orders] will result in the imposition of sanctions, up to and including pre-filing restrictions and dismissal of this action." The court issued a new scheduling order extending the discovery deadlines and setting the next status conference for November 6, 2025. Williams filed an appeal of that order, which we again dismissed for lack of jurisdiction. *Williams v. Crystal Flash Co.*, No. 25-1819, 2025 U.S. App. LEXIS 28809, at *3 (6th Cir. Nov. 3, 2025).

Williams failed to appear at the scheduled status conference. Defense counsel advised the district court that Williams had not provided his initial disclosures and witness lists or responded to the defendants' discovery requests. Defense counsel orally moved for dismissal based on Williams's non-compliance. The court granted the defendants' motion and dismissed the action with prejudice, pursuant to Rule 37.

On appeal, Williams argues that the district court abused its discretion by dismissing his case with prejudice given his lack of legal training and pro se status. He contends that he made good faith efforts to comply with the court's orders and that his "failures were due to inexperience and excusable neglect, not willfulness or bad faith."

"The decision to dismiss a complaint for failure to comply with a discovery obligation or other court order is reviewed for abuse of discretion." *Mager v. Wis. Cent. Ltd.*, 924 F.3d 831, 837 (6th Cir. 2019). "An abuse of discretion exists when the reviewing court is firmly convinced that a mistake has been made." *Stough v. Mayville Cmty. Schs.*, 138 F.3d 612, 614 (6th Cir. 1998).

Rule 37(b) authorizes the district court to order sanctions, including dismissal, for failure to comply with a discovery order. Fed. R. Civ. P. 37(b)(2)(A)(v). In determining whether

(2-d)

dismissal is an appropriate sanction for failure to comply with a discovery obligation or court order, we consider four factors:

> (1) whether the party's failure is due to willfulness, bad faith, or fault; (2) whether the adversary was prejudiced by the dismissed party's conduct; (3) whether the dismissed party was warned that failure to cooperate could lead to dismissal; and (4) whether less drastic sanctions were imposed or considered before dismissal was ordered.

Mager, 924 F.3d at 837 (quoting *United States v. Reyes*, 307 F.3d 451, 458 (6th Cir. 2002)). "Although no one factor is dispositive, dismissal is proper if the record demonstrates delay or contumacious conduct." *Reyes*, 307 F.3d at 458. Based on these factors, we conclude that the district court did not abuse its discretion in dismissing Williams's case.

The first factor—willfulness, bad faith, or fault—is satisfied when the plaintiff's conduct "display[s] either an intent to thwart judicial proceedings or a reckless disregard for the effect of [his] conduct on those proceedings." *Mulbah v. Detroit Bd. of Educ.*, 261 F.3d 586, 591 (6th Cir. 2001) (second alteration in original) (quoting *Shepard Claims Serv. v. William Darrah & Assocs.*, 796 F.2d 190, 194 (6th Cir. 1986)). Despite the district court's warnings of the consequences of failing to respond to Crystal Flash's discovery requests and having been given multiple opportunities to do so, Williams never submitted his initial disclosures, witness lists, and exhibits, failed to respond to Crystal Flash's requests for discovery, and refused to appear for a deposition. And he failed to appear for two scheduled conferences with the court. Williams insists that he acted in good faith and, through the use of "AI tools," attempted to learn the court rules and procedures. But the record does not reflect any good faith effort to comply with discovery or the court's orders. At no point did he seek an extension of time to comply with the discovery deadlines or give the court advance notice of scheduling conflicts. And in an e-mail exchange with defense counsel just before the deadline for responding to Crystal Flash's discovery requests, Williams made clear that he had no intention of complying with the discovery deadlines. When asked by defense counsel whether he would concur in a motion to compel his discovery responses, Williams responded, "I'm supposed to sign-off on trusting you in Discovery[?] [AI] puts that at a 10 on the BullShit Meter." Williams's outright refusal to comply with the court's scheduling orders and the

(2-e)

defendants' discovery requests reflects a willful intent to thwart the case proceedings or, at the very least, reckless disregard for the effect that his noncompliance had on the case. *Id.* This factor supports the district court's decision to dismiss the action.

As to the second factor—prejudice—the key question "is whether the defendants 'waste[d] time, money, and effort in pursuit of cooperation which [the plaintiff] was legally obligated to provide.'" *Schafer v. City of Defiance Police Dep't*, 529 F.3d 731, 739 (6th Cir. 2008) (alterations in original) (quoting *Harmon v. CSX Transp., Inc.*, 110 F.3d 364, 368 (6th Cir. 1997)). Williams's repeated noncompliance forced Crystal Flash to move to compel and to later move for dismissal. This factor weighs in favor of dismissal.

With respect to the third factor, there is no dispute that the district court explicitly warned Williams that failure to comply with the defendants' discovery requests and the court's orders could result in sanctions, including dismissal of his case. Williams contends that he "struggled to fully grasp" the warnings "due to his lack of legal background," but the court's warnings were straightforward and easily understood by a non-lawyer. We note that, although Williams insists that he was confused by the court's orders and unable to comply because he "is a truck driver and a regular, everyday working man who has spent his career on the road, not in law school," he refused the assistance for pro se litigants that the court offered. And his lack of legal training did not prevent him from filing numerous motions in the district court and appeals in this court.

With respect to the fourth factor, the district court did not impose lesser sanctions on Williams before dismissing the case. But we have never held that a court cannot dismiss a complaint "as the first and only sanction." *Harmon*, 110 F.3d at 368. Indeed, where there is a record of "sufficiently egregious" conduct, as there is here, dismissal may be appropriate even if the court did not consider lesser sanctions. *Id.* at 369. Given that Williams had multiple opportunities to avoid the harsh sanction of dismissal but refused to comply with the court's orders and instead filed baseless motions and appeals, the district court did not abuse its discretion by dismissing the case with prejudice before imposing lesser sanctions.

(2-F)

Finally, Williams moves for the appointment of counsel, but he has failed to show any exceptional circumstances that would warrant granting that request. *See Lavado v. Keohane*, 992 F.2d 601, 606 (6th Cir. 1993).

For these reasons, we **DENY** Williams's motions for the appointment of counsel and for oral argument and **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

(2-9)

FILED
Aug 5, 2026
KELLY L. STEPHENS, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 25-2108

MICHAEL DEAN WILLIAMS,

Plaintiff-Appellant,

v.

CRYSTAL FLASH CO., et al.,

Defendants-Appellees.

Before: McKEAGUE, THAPAR, and MURPHY, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Eastern District of Michigan at Detroit.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

(2-h)

App. 3

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL DEAN WILLIAMS,

Plaintiff,

v.

Case No.: 24-11640
Hon. Gershwin A. Drain

CRYSTAL FLASH CO.,

Defendant.
_____/

ORDER GRANTING DEFENDANT'S ORAL MOTION TO DISMISS AND DISMISSING ACTION WITH PREJUDICE PURSUANT TO RULE 37(b)(2)(A) OF THE FEDERAL RULES OF CIVIL PROCEDURE

Plaintiff filed his Complaint on June 25, 2024, alleging claims under the Eighth and Fourteenth Amendments, Title VII of the Civil Rights Act of 1964, and criminal conspiracy under 18 U.S.C. § 241. ECF No. 1. The Court dismissed Plaintiff's claims under the Eighth and Fourteenth Amendments *sua sponte* on July 25, 2024 because Plaintiff failed to establish that Crystal Flash was a state actor. ECF No. 9, PageID.123-125. The Court further dismissed Plaintiff's claim of criminal conspiracy because 18 U.S.C. § 241 is a criminal provision that does not create a private cause of action for individuals to seek civil remedies. *Id.*, PageID.126.

(App. 3a)

Plaintiff, proceeding *pro se*, filed a flurry of motions after the Court's July 25, 2024 Opinion and Order of Partial Summary Dismissal, including two motions for summary judgment. *See* ECF Nos. 12, 14, 21, 27, 29, 30, 33. This Court disposed of those motions on November 7, 2024. ECF No. 41.

On November 6, 2024, the parties appeared for a status conference, and Plaintiff was referred to the Federal Pro Se Legal Assistance Clinic. ECF No. 45, PageID.587. The Court set a scheduling conference for November 20, 2024, and advised the parties to work together to craft a Rule 26 discovery plan. *Id.* Plaintiff refused to engage with Defendants' counsel on the discovery plan. *Id.*, PageID.588. Plaintiff further failed to appear for the scheduling conference on November 20, 2024. *Id.* Plaintiff also refused to accept the Federal Pro Se Clinic's assistance. *Id.*

Instead, Plaintiff filed a motion for the appointment of counsel, which the Court denied. ECF No. 48. Plaintiff sought to appeal this decision, and the Sixth Circuit Court of Appeals dismissed the appeal for lack of jurisdiction. ECF Nos. 51 and 58. Nevertheless, Plaintiff has continued to file pleadings in the appellate court, and the appellate court has continued to deny them. ECF Nos. 60, 63, 73 and 80.

On August 26, 2025, this Court ruled on fifteen motions filed by Plaintiff and one filed by Defendants. ECF No. 95. In a 19-page opinion, this Court addressed each of Plaintiff's motions. Among other things, the court noted that

Plaintiff had not served his Initial Disclosures, Witness or Exhibits Lists and had refused to schedule his deposition, in violation of the court's November 21, 2024 Scheduling Order. ECF No. 95, PageID.1270. The court warned Plaintiff: "This is Plaintiff's final warning. Failure to comply with this Court's Orders will result in the imposition of sanctions, up to and including pre-filing restrictions and dismissal of this action." ECF No. 95, PageID.1282. The court then issued a new Scheduling Order.

On November 6, 2025, this Court held a status conference. Plaintiff failed to appear for the status conference once again. At the conference, Defendant's counsel confirmed that Plaintiff has not complied with this Court's August 26, 2025 Order. He has not served his Initial Disclosures or Witness Lists. Nor has he responded to Defendant's discovery requests. Counsel for Defendant orally moved for dismissal of this action at the conference. The Court granted Defendant's oral motion. Since the filing of his Complaint, Plaintiff has repeatedly delayed the case's progress, including by filing meritless and dilatory motions. Indeed, continuing to clog this court's docket with a case that has made no progress due to Plaintiff's refusal to abide by any court order or the federal court rules flies in the face of judicial economy.

Federal Rule of Civil Procedure 37 explicitly authorizes the imposition of sanctions for a party's failure to comply with a court order. When a party

(3.c)

repeatedly misses deadlines and willfully fails to comply with the orders of this Court, this Court has the discretion to dismiss that party's claims or defenses. *See, e.g., Mager v. Wisconsin Central Ltd.*, 924 F.3d 831, 837-40 (6th Cir. 2019). This Court has specifically warned Plaintiff that failure to comply with this Court's orders may result in the imposition of sanctions, up to and including dismissal of this action and the imposition of attorney's fees. ECF No. 45, PageID.589; ECF No. 95, PageID.1282. Plaintiff has continued to defy this Court's orders. The Court will therefore impose sanctions against Plaintiff, including dismissal of this action and the imposition of attorney's fees and costs incurred as a result of Plaintiff's dilatory and abusive litigation practices.

Accordingly, this cause of action is DISMISSED WITH PREJUDICE. **Plaintiff SHALL SHOW CAUSE in writing, no later than December 9, 2025,** why the Court should not enter sanctions against Plaintiff in the amount of defense counsel's costs and attorney's fees incurred since November 21, 2024, when Plaintiff was first warned that failure to appear as noticed and failure to comply with this Court's orders may result in the imposition of sanctions.

SO ORDERED.

Dated: November 26, 2025

/s/Gershwin A. Drain
GERSHWIN A. DRAIN
United States District Judge

(3d)

App. 4

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL DEAN WILLIAMS,

Plaintiff,

v.

Case No.: 24-11640
Hon. Gershwin A. Drain

CRYSTAL FLASH CO.,

Defendant.
_____/

JUDGMENT

The above-entitled matter having come before the Court and in accordance with the Order entered on this date;

IT IS ORDERED AND ADJUDGED that judgment is entered in favor of the Defendant and against the Plaintiff. This cause of action is DISMISSED WITH PREJUDICE.

/s/Gershwin A. Drain
GERSHWIN A. DRAIN
United States District Judge

Dated: November 26, 2025

APP. (4-a)

App. 5

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL DEAN WILLIAMS,

Plaintiff,

v.

Case No.: 24-cv-11640
Hon. Gershwin A. Drain

CRYSTAL FLASH CO., *et al.*,

Defendants.
_____/

ORDER DENYING PLAINTIFF'S MOTION FOR THE APPOINTMENT OF COUNSEL [#43]

On November 20, 2024, Plaintiff failed to appear for a scheduling conference set for 10:00 a.m. At the conference, Defendants' counsel informed the Court that Plaintiff had submitted a Motion for the Appointment of Counsel to the Clerk of the Court. However, by the time of the scheduling conference, there was no Motion for the Appointment of Counsel filed on the docket.

Also, on November 20, 2024, the Court drafted an Order Following Plaintiff's Failure to Appear for November 20, 2024 Scheduling Conference and sent the Order to the Clerk for filing. ECF No. 45. Unbeknownst to the undersigned, the Clerk had docketed Plaintiff's Motion for the Appointment of Counsel, as well as Plaintiff's Affidavit, at 2:41 p.m. on November 20, 2024.

(App. 5a)

Thereafter, the Court's Order Following Plaintiff's Failure to Appear for November 20, 2024 Scheduling Conference was docketed on November 21, 2024. *Id.*

The Court will now address Plaintiff's Motion for the Appointment of Counsel. As an initial matter, the Court has already set forth the law on the appointment of counsel in civil cases in its Order Following Plaintiff's Failure to Appear for November 20, 2024 Scheduling Conference. *Id.*, PageID.589 ("not[ing] that there is no constitutional right to the appointment of counsel in civil cases.")(citing *Lavado v. Keohane*, 992 F.2d 601, 605-06 (6th Cir. 1993)). The Court's order further explained that:

> "[A]bsent extraordinary circumstances," district courts shall "not appoint lawyers for indigent" persons. *Glover v. Johnson*, 75 F.3d 264, 268 (6th Cir. 1996). Appointment of counsel in civil cases "is within the court's discretion." *Id.* In determining whether extraordinary circumstances exist warranting the appointment of counsel, courts examine "the type of case and the abilities of the plaintiff to represent himself. This generally involves a determination of the complexity of the factual and legal issues involved." *Lavado*, 992 F.2d at 605 (internal citations and quotations omitted). Here, there is nothing extraordinary about Plaintiff's hostile work environment and retaliation claims under Title VII of the Civil Rights Act of 1964. This is not a complex case. Thus, appointment of counsel to represent Plaintiff is not warranted under the circumstances. The Court has directed Plaintiff to seek the assistance of the Federal Pro Se Clinic, and it is his decision whether or not to accept assistance from the clinic. However, the Court is not inclined to appoint counsel in this non-complex matter, thus Plaintiff will be required to proceed *pro se*.

Id., PageID.589-590.

(5b)

In his present motion to appoint counsel, Plaintiff relies on the non-binding Ninth Circuit Court of Appeals case *United States v. 30.64 Acres of Land*, 795 F.2d 796 (9th Cir. 1986). In *30.64 Acres*, the Ninth Circuit determined that the district court "committed errors of law in denying [the defendant]'s motion for counsel and in failing to consider the propriety of appointing a guardian ad litem." *Id.* at 797. Even if *30.64 Acres* was binding on this Court, it would not compel this Court to reach a different conclusion about Plaintiff's request for the appointment of counsel.

As an initial matter, Plaintiff seems to argue he is incompetent to handle his case on his own. However, attached to the *30.64 Acres* plaintiff's motion requesting counsel was "a detailed Social Security Administration (SSA) report finding him totally physically and mentally disabled under SSA regulations." *Id.* Moreover, the district court in *30.64 Acres* mistakenly believed "it had no *power* to secure counsel for [the defendant], regardless of [the defendant]'s need or financial condition." *Id.* at 804 (emphasis in original). "As a result, [the district court] never reached the merits of [the defendant]'s motion or exercised its discretion in requesting or declining to request counsel for him." Finally, the *30.64 Acres* court held that the district court should have exercised its discretion concerning whether the appointment of a guardian ad litem was required because "a question clearly existed whether [the defendant] was competent and could adequately protect

(5c)

himself." *Id.* at 805. The Ninth Circuit noted that a question of incompetence generally occurs when it appears during the course of the proceedings "that a party may be suffering from a condition that materially affects his ability to represent himself, . . . or otherwise to understand the nature of the proceedings . . . ." *Id.* (internal citations omitted).

In this case, nothing has transpired that would lead this Court to conclude that Plaintiff is suffering from a condition that materially affects his ability to represent himself. Plaintiff appeared at the November 6, 2024 status conference in this matter and was able to understand the proceedings and issues of this case. He was able to allege a viable Title VII claim and has demonstrated an ability to file motions on his own behalf, including the instant motion for the appointment of counsel.

As the Court has previously noted, the decision whether to appoint counsel for an indigent litigant in a civil case is a matter vested within the broad discretion of the district court. *Childs v. Pellegrin*, 822 F.2d 1384 (6th Cir. 1987). A court appoints counsel in such case only in "exceptional circumstances." *Lavado,* 992 F.2d at 604-05. Plaintiff's lack of legal training does not rise to the level of exceptional circumstances. *See Howard v. Dougan*, No. 99-2232, 2000 U.S. App. LEXIS 15574 (6th Cir. Jun. 23, 2000)(concluding "the district court had no duty to remedy [the plaintiff]'s lack of legal training by appointing counsel as no

(5d)

constitutional right to counsel exists in civil cases.") (citing *Lavado*, 992 F.2d at 605-06). Moreover, Plaintiff's indigence does not rise to the level of exceptional circumstances. "An 'exceptional circumstance' is something 'beyond relatively routine circumstances such as illiteracy, poverty, lack of legal knowledge, or illness.'" *Sanders v. Purdon*, No. 2:23-cv-11413, 2024 U.S. Dist. LEXIS 173643 (E.D. Mich. Sep. 25, 2024) (quoting *Andwan v. Village of Greenhills*, No. 1:13-cv-624, 2017 U.S. Dist. LEXIS 6873, at *7 (S.D. Ohio Jan. 18, 2017)).

Finally, the Court notes that the Defendants' proposed discovery plan allowing for six months of discovery was reasonable. The Court typically provides parties in civil cases only six months for discovery, whether or not both parties are represented by counsel. Plaintiff does not explain why additional time would be needed in this non-complex Title VII matter to complete discovery.

Accordingly, for all of these reasons, Plaintiff's Motion for the Appointment of Counsel [#43] is DENIED.

SO ORDERED.

Dated: November 21, 2024

/s/Gershwin A. Drain
GERSHWIN A. DRAIN
United States District Judge

(5e)

App. 6

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL D. WILLIAMS, Plaintiff, v. CRYSTAL FLASH, ET AL., Defendants.	Case No. 2:24-cv-11640 Hon. Brandy R. McMillion

OPINION AND ORDER OF PARTIAL SUMMARY DISMISSAL

This is a *pro se* civil rights case filed pursuant to 42 U.S.C. § 1983 by Plaintiff Michael D. Williams ("Williams") against his former employer Crystal Flash Co. ("Crystal Flash") and certain management employees, Craig Broekhuizen, Krinn Vandersloot, and Caitlyn Kozal (collectively, "Defendants"). ECF No. 1. Williams brings several claims for a race-based hostile work environment and retaliation under Title VII of the Civil Rights Act of 1964, violations of the Due Process and Equal Protection Clauses of the Fourteenth Amendment, violation of his Eighth Amendment right against Cruel and Unusual Punishment, and conspiracy to violate his rights under 18 U.S.C. § 241. ECF No. 1 at PageID.4-5, 13. He accuses Defendants of failing to address numerous incidents of harassment and assault

(App. 6a)

perpetrated by a co-worker and conspiring with each other and the Michigan Department of Civil Rights ("MDCR") to oppress his civil rights. ECF No. 1 at PageID.2. After reviewing the Complaint, the Court **SUMMARILY DISMISSES** Plaintiff's claims under the Fourteenth Amendment, Eighth Amendment, and 18 U.S.C. § 241, pursuant to 28 U.S.C. § 1915(e)(2)(B). The Court finds that Williams has not alleged sufficient facts to state a claim for which relief can be granted.

I.

Williams worked as a Tanker Truck Driver for Crystal Flash. ECF No. 1 at PageID.4, ¶¶ 1-2. He alleges that co-worker Kenny Walker (a black man), assaulted him (a white man) twice and harassed him 105 times over a span of 420 days. *Id.* at PageID.7, ¶ 9. The first assault allegedly took place on February 2, 2020, which was confirmed by an investigation of the Michigan Department of Civil Rights (MDCR). *Id.* at PageID.4, ¶ 3. However, the Complaint is devoid of specific details of the second assault. Williams claims to have "38 documented" harassing incidents through conversations, letters, and videos of the harassment, however he does not provide that list of documented incidents in its entirety anywhere in the Complaint or Exhibits. *See id.* at PageID.7, ¶ 9.

Williams contends that Crystal Flash protected Walker due to his race, resulting in violations of Plaintiff's Fourteenth Amendment rights to Equal Protection and Due Process and his Eighth Amendment right against Cruel and

(6-b)

No. 1 at PageID.2. Williams alleges multiple incidents of harassment, including two assaults and numerous derogatory remarks, with 38 incidents documented through various means. ECF No.1 at PageID.7, ¶ 9. The Complaint fails to expand on each of the 38 documented incidents Williams speaks of. It does, however, allege that the first assault occurred on February 2, 2020. *Id.* at PageID.4, ¶ 3. Although the Plaintiff has alleged that a 2nd assault occurred during his employment at Crystal Flash, the Court is unable to discern sufficient information regarding that assault. These details, or lack thereof, are critical to the Court's determination of whether these allegations meet the legal standard for severe or pervasive harassment. *See Faragher v. City of Boca Raton*, 524 U.S. 775, 787-88 (1998) (explaining that harassment must be both objectively and subjectively severe or pervasive to alter employment conditions); *see also Randolph v. Ohio Dep't of Youth Servs.*, 453 F.3d 724, 733 (6th Cir. 2006) (finding that a single incident of harassment was insufficient to establish a hostile work environment "unless extremely serious"). The Court will therefore grant Williams leave to amend his complaint to include the additional detail if he so desires.

To establish a prima facie case of retaliation under Title VII, a plaintiff must demonstrate: (1) they engaged in protected activity, (2) the employer took an adverse employment action against them, and (3) there is a causal connection between the protected activity and the adverse action. *Burlington N. & Santa Fe Ry. Co. v. White*,

(6-c)

protection policy does not independently support a viable claim under the Fourteenth Amendment, Eighth Amendment, or 18 U.S.C. § 241. The Court can, however, consider these allegations within the broader context of the Plaintiff's Title VII claims to determine if they contribute to the plausibility of a hostile work environment and retaliation.

IV.

Based on the analysis above, Plaintiff fails to state claims under the Fourteenth and Eighth Amendments and 18 U.S.C. § 241 for which relief can be granted.

Accordingly, Plaintiff's Fourteenth Amendment, Eighth Amendment, and 18 U.S.C. § 241 claims are **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief can be granted. 28 U.S.C. § 1915(e)(2)(B). The Title VII hostile work environment and retaliation claims are not summarily dismissed at this stage and require further factual development. The Court will grant leave for Plaintiff to supplement the factual support of the Title VII claims, if he so desires.

IT IS SO ORDERED.

Dated: July 25, 2024

s/Brandy R. McMillion
BRANDY R. MCMILLION
U.S. District Judge

(6-d)

Additional material from this filing is available in the Clerk's Office.