

***** PUBLIC DOCKET *****

**U.S. District Court
Southern District of Indiana (Indianapolis)
CIVIL DOCKET FOR CASE #: 1:19-cv-00519-TWP-MJD**

CAPPS v. CALHOUN et al
Assigned to: Judge Tanya Walton Pratt
Referred to: Magistrate Judge Mark J. Dinsmore
Demand: \$25,000
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 01/31/2019
Jury Demand: Defendant
Nature of Suit: 555 Prisoner Petitions -
Prison Condition
Jurisdiction: Federal Question

Plaintiff

ABBRELLA FAITH CAPPS

represented by **ABBRELLA FAITH CAPPS**
168857
PLAINFIELD - CF
PLAINFIELD CORRECTIONAL
FACILITY
Inmate Mail/Parcels
727 MOON ROAD
PLAINFIELD, IN 46168
PRO SE

V.

Defendant

HOLLY CALHOUN

represented by **James S. Stephenson**
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ATTORNEY TO BE NOTICED

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Defendant

MICHAEL PERSON

Dr.

represented by **Carol A. Dillon**

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Date Filed	#	Docket Text
01/31/2019	<u>1</u>	COMPLAINT against HOLLY CALHOUN, CRH, PEARSON, filed by ABRELLA FAITH CAPPS. (No fee paid with this filing) (Attachments: # <u>1</u> Envelope)(HET) (Entered: 01/31/2019)
01/31/2019	<u>2</u>	MOTION for Leave to Proceed in forma pauperis, filed by Plaintiff ABRELLA FAITH CAPPS. (Attachments: # <u>1</u> Exhibit Inmate Account, # <u>2</u> Envelope)(HET) (Entered: 01/31/2019)
01/31/2019	<u>3</u>	MAGISTRATE JUDGE's NOTICE of Availability to Exercise Jurisdiction issued. (HET) (Entered: 01/31/2019)
02/04/2019	<u>4</u>	Order - Granting <u>2</u> Motion for Leave to Proceed In Forma Pauperis, Screening Complaint, and Directing Service of Process. The plaintiff's motion to proceed in forma pauperis, dkt. <u>2</u> , is granted. The assessment of even an initial partial filing fee is waived because the plaintiff has no assets and no means by which to pay a partial filing fee. Accordingly, no initial partial filing fee is due at this time. Accordingly, Ms. Capps' Fourteenth Amendment medical care claims against Nurse Calhoun and Doctor Pearson shall proceed. There are no allegations against "CRH." It appears in the caption and is identified as a defendant but is otherwise not mentioned in the complaint. Any claim against CRH is dismissed for failure to state a claim upon which relief can be granted. The clerk is directed pursuant to Fed. R. Civ. P. 4(c)(3) to issue process to defendants (1) Nurse Holly Calhoun; and (2) Doctor Pearson in the manner specified by Fed. R. Civ. P. 4(d). Process shall consist of the complaint (docket <u>1</u>), applicable forms (Notice of Lawsuit and Request for Waiver of Service of Summons and Waiver of Service of Summons), and this Order. The clerk is directed to terminate CRH on the docket. (See Order.) Copies per distribution list. Signed by Judge Tanya Walton Pratt on 2/4/2019. (NAD) (Entered: 02/04/2019)

02/04/2019	5	NOTICE of Lawsuit & Waiver Issued by Clerk to: 1) Holly Calhoun; and 2) Dr. Pearson. (NAD) (Entered: 02/04/2019)
02/08/2019	6	CONSENT to Jurisdiction to US Magistrate Judge by ABBRELLA FAITH CAPPS. (Attachments: # 1 Envelope)(NAD) (Entered: 02/11/2019)
02/21/2019	7	NOTICE of Appearance by James S. Stephenson on behalf of Defendant HOLLY CALHOUN. (Stephenson, James) (Entered: 02/21/2019)
02/21/2019	8	DEMAND for Trial by Jury, filed by Defendant HOLLY CALHOUN. (Stephenson, James) (Entered: 02/21/2019)
02/21/2019	9	WAIVER OF SERVICE Returned Executed, filed by HOLLY CALHOUN. HOLLY CALHOUN waiver sent on 2/4/2019. (Stephenson, James) (Entered: 02/21/2019)
02/27/2019	11	ENTRY DOCUMENTING NON-PARTY COMMUNICATION - The Court has attempted to assist the pro se litigant with serving the defendants with process. The Court has been notified by counsel for Advanced Correctional Healthcare, the contracted medical provider for the Bartholomew County Jail, that the clerk's attempts to serve Dr. Michael Person at Bartholomew County Jail have been unsuccessful. In receiving this information informally, the Court has agreed not to disclose defendant Dr. Michael Person's last known address to the parties and to use it only for the purpose of effecting service on the defendant. Accordingly, the clerk has docketed the letter with access restricted only to court users. This address information may be further disclosed to the United States' Marshal or his designee to assist with service. The clerk is directed to update the docket to reflect the correct spelling of Dr. Michael Person. Copy to Plaintiff via US Mail. Signed by Judge Tanya Walton Pratt on 2/27/2019.(NAD) (Entered: 02/28/2019)
02/27/2019	12	ORDER DIRECTING RE-ISSUANCE AND SERVICE OF PROCESS - The clerk is directed pursuant to Fed. R. Civ. P. 4(c)(3) to re-issue process to defendant Dr. Michael Person in the manner specified by Rule 4(d). Process shall consist of the complaint, dkt. 1 , the screening entry of February 4, 2019, dkt. 4 , applicable forms (Notice of Lawsuit and Request for Waiver of Service of Summons and Waiver of Service of Summons), and this Order. Copies per distribution list. Signed by Judge Tanya Walton Pratt on 2/27/2019.(NAD) (Entered: 02/28/2019)
02/28/2019	13	NOTICE of Lawsuit & Waiver Issued by Clerk to: Dr. Michael Pearson. (NAD) (Entered: 02/28/2019)
03/05/2019	14	NOTICE of Appearance by Carol A. Dillon on behalf of Defendant MICHAEL PERSON. (Dillon, Carol) (Entered: 03/05/2019)
03/05/2019	15	WAIVER OF SERVICE Returned Executed, filed by MICHAEL PERSON. MICHAEL PERSON waiver sent on 3/5/2019. (Dillon, Carol) (Entered: 03/05/2019)
03/07/2019	16	NOTICE of Appearance by Rosemary L. Borek on behalf of Defendant HOLLY CALHOUN. (Borek, Rosemary) (Entered: 03/07/2019)
04/02/2019	17	ANSWER to 1 Complaint , filed by HOLLY CALHOUN.(Borek, Rosemary) (Entered: 04/02/2019)
05/06/2019	18	<i>Defendant Dr. Michael Person's</i> ANSWER to 1 Complaint , filed by MICHAEL PERSON.(Dillon, Carol) (Entered: 05/06/2019)

05/08/2019	19	ORDER SETTING PRETRIAL SCHEDULE AND DISCUSSING DISCOVERY IN PRISONER LITIGATION: This Order sets the schedule for how this action shall proceed. Part I sets forth the pretrial deadlines. Part II discusses various aspects of discovery. Facilitating the discovery process can be difficult, and this Order is issued in an effort to help explain and streamline the process for the parties. The parties should carefully read this Order. *SEE ORDER FOR ADDITIONAL INFORMATION*. Dispositive Motions due by 12/9/2019. Discovery due by 11/7/2019. Copy to Plaintiff via US Mail. Signed by Judge Tanya Walton Pratt on 5/8/2019.(NAD) (Entered: 05/09/2019)
05/08/2019	20	ORDER - NOTICE TO PRO SE LITIGANTS : The following information is provided to pro se litigants to inform them about rules and procedures governing how they communicate with the Court. Pro se litigants should read this Notice carefully before filing anything further with the Court. All litigants are expected to comply with the Federal Rules of Civil Procedure and this Court's Local Rules. Therefore, the rules and procedures contained in this Notice are not all of the rules pro se litigants must follow. *SEE ORDER FOR ADDITIONAL INFORMATION* Copy to Plaintiff via US Mail. Signed by Judge Tanya Walton Pratt on 5/8/2019.(NAD) (Entered: 05/09/2019)
07/11/2019	21	NOTICE of Appearance by Jill Esenwein on behalf of Defendant MICHAEL PERSON. (Esenwein, Jill) (Entered: 07/11/2019)
08/08/2019	22	MOTION <i>for Leave to Depose Incarcerated Person</i> , filed by Defendant HOLLY CALHOUN. (Attachments: # 1 Text of Proposed Order Order)(Borek, Rosemary) (Entered: 08/08/2019)
08/12/2019	23	ORDER - Comes now defendant, Holly Calhoun, by counsel, and moves the court for leave to depose an incarcerated person pursuant to Rule 30(a)(2), Federal Rules of Civil Procedure. The court having considered said motion, dkt. 22 , and being duly advised now grants leave to defendant, Holly Calhoun, to take the deposition of plaintiff, Abbrella Capps, under such terms and conditions as are acceptable to the Superintendent of the correctional facility in which Ms. Capps is housed. Copy to Plaintiff via US Mail. Signed by Judge Tanya Walton Pratt on 8/12/2019. (NAD) (Entered: 08/12/2019)
10/07/2019	24	NOTICE of Filing <i>Regarding Settlement Conference</i> by HOLLY CALHOUN (Borek, Rosemary) (Entered: 10/07/2019)
10/07/2019	25	NOTICE <i>to Court Regarding Settlement Conference</i> , filed by Defendant MICHAEL PERSON (Esenwein, Jill) (Entered: 10/07/2019)
11/21/2019	26	MOTION for Extension of Time to January 8, 2020 in which to 19 Order Setting Pretrial Schedule and Discussing Discovery in Prisoner Litigation <i>TO FILE HIS MOTION FOR SUMMARY JUDGMENT</i> , filed by Defendant MICHAEL PERSON. (Attachments: # 1 Text of Proposed Order Granting Motion)(Esenwein, Jill) (Entered: 11/21/2019)
11/25/2019	27	ORDER ON DEFENDANT'S 26 MOTION FOR EXTENSION OF TIME TO FILE MOTION FOR SUMMARY JUDGMENT. IT IS THEREFORE ORDERED ADJUDGED AND DECREED that Defendant's Motion, dkt. 26 , should be and is hereby GRANTED. Defendant shall have up to and including January 8, 2020, to file his Motion for Summary Judgment. Copy to Plaintiff via US Mail. Signed by Judge Tanya Walton Pratt on 11/25/2019. (NAD) (Entered: 11/26/2019)

12/09/2019	28	NOTICE of Filing <i>Regarding Right to Respond to and Submit Evidence in Opposition to Motion for Summary Judgment</i> by HOLLY CALHOUN (Borek, Rosemary) (Entered: 12/09/2019)
12/09/2019	29	MOTION for Summary Judgment , filed by Defendant HOLLY CALHOUN. (Attachments: # 1 Exhibit Holly Calhoun Declaration, # 2 Exhibit Documents from Plaintiff's Medical File, # 3 Exhibit Dr. Persons Emails, # 4 Exhibit Inmate Co-Pay Ordinance, # 5 Exhibit Kiosk Exchange, # 6 Exhibit Plaintiff's Medical Screening, # 7 Exhibit Kiosk Exchange, # 8 Exhibit Grievances, # 9 Exhibit Abbrella Capps Deposition, # 10 Exhibit 4 to Depo- Def. Calhouns First Interrogatories, # 11 Exhibit 5 to Depo- Def Booking Report, # 12 Exhibit 6 to Depo- Keefe Messages, # 13 Exhibit 7 to Depo-Grievance Form, # 14 Exhibit 8 to Depo-Resident Account Summary, # 15 Exhibit Exhibit 9 to Depo-Refusal of Treatment Medical Forms) (Borek, Rosemary) Modified on 12/10/2019 - Deleted duplicative exhibit descriptions(NAD). (Entered: 12/09/2019)
12/09/2019	30	BRIEF/MEMORANDUM in Support re 29 MOTION for Summary Judgment , filed by Defendant HOLLY CALHOUN. (Borek, Rosemary) (Entered: 12/09/2019)
01/08/2020	31	MOTION for Summary Judgment , filed by Defendant MICHAEL PERSON. (Attachments: # 1 Text of Proposed Order Granting Motion, # 2 Supplement Rule 11 Compliance Certification)(Esenwein, Jill) (Entered: 01/08/2020)
01/08/2020	32	Designation of Evidence re 31 MOTION for Summary Judgment , filed by Defendant MICHAEL PERSON. (Attachments: # 1 Exhibit A - Affidavit of Dr. Person, # 2 Exhibit B - Medical Records, # 3 Exhibit C - Abbrella Capps Deposition) (Esenwein, Jill) Modified on 1/9/2020 - Edited link to 33 (NAD). (Entered: 01/08/2020)
01/08/2020	33	***WITHDRAWN PER ORDER AT 36 ***BRIEF/MEMORANDUM in Support re 31 MOTION for Summary Judgment , filed by Defendant MICHAEL PERSON. (Esenwein, Jill) Modified on 1/27/2020 (NAD). (Entered: 01/08/2020)
01/08/2020	34	NOTICE REGARDING PLAINTIFFS RIGHT TO RESPOND TO AND SUBMIT EVIDENCE IN OPPOSITION TO DEFENDANTS MOTION FOR SUMMARY JUDGMENT, filed by Defendant MICHAEL PERSON, re 31 MOTION for Summary Judgment . (Esenwein, Jill) (Entered: 01/08/2020)
01/20/2020	35	First MOTION for Leave to File <i>TO FILE AN AMENDED BRIEF</i> , filed by Defendant MICHAEL PERSON. (Attachments: # 1 Exhibit A; Amended Brief, # 2 Text of Proposed Order Granting Motion)(Esenwein, Jill) (Entered: 01/20/2020)
01/25/2020	36	ORDER ON DEFENDANT DR. MICHAEL PERSON'S 35 MOTION FOR LEAVE TO FILE AN AMENDED BRIEF - And the Court, being duly advised, finds that said Motion, dkt. 35 , is granted. IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendant Dr. Michael Person is permitted to withdraw his previously filed Brief in support of his Motion for Summary Judgment (Dkt. 33) and file an Amended Brief in support of his Motion for Summary Judgment. The clerk is directed to docket the proposed Amended Brief as the Amended Brief in support of his Motion for Summary Judgment. (Dkt. 31). Copy to Plaintiff via US Mail. Signed by Judge Tanya Walton Pratt on 1/25/2020. (NAD) (Entered: 01/27/2020)
01/25/2020	37	Amended Brief/REPLY in Support of Motion re 31 MOTION for Summary Judgment , filed by Defendant MICHAEL PERSON. (NAD) (Entered: 01/27/2020)

02/03/2020	38	NOTICE of Change of Address for ABBRELLA FAITH CAPPS. (Attachments: # 1 Envelope) (NAD) (Entered: 02/04/2020)
02/10/2020	39	Mail Returned as undeliverable (Return to Sender; Not Deliverable as Addressed). 36 Order on Motion for Leave to File sent to ABBRELLA FAITH CAPPS at 543 Second Street, Columbus, IN 47201. RE-MAILED COPY OF DKT 36 TO NEW ADDRESS, NOW UPDATED ON DOCKET, PER PLAINTIFF'S NOTICE OF CHANGE OF ADDRESS AT 38 TO: ROCKVILLE CORRECTIONAL FACILITY Inmate Mail/Parcels 811 West 50 North Rockville, IN 47872. (NAD) (Entered: 02/11/2020)
03/13/2020	40	NOTICE of Change of Address for ABBRELLA FAITH CAPPS. (Attachments: # 1 Envelope) (NAD) (Entered: 03/16/2020)
03/27/2020	41	ORDER EXTENDING DEADLINE TO FILE RESPONSE TO MOTIONS FOR SUMMARY JUDGMENT - The defendants in this case filed motions for summary judgment on December 9, 2019, dkt. 29 , and January 8, 2020, dkt. 31 . On March 13, 2020, Plaintiff Abbrella Capps filed a notice of change of address, which stated in part, "I have once again moved to another facility." Dkt. 40. Out of an abundance of caution, the Court sua sponte extends Ms. Capps' deadline to file a response to the defendants' motions for summary judgment to April 27, 2020. Failure to file a response will result in the Court ruling on the defendants' motions for summary judgment without her input. Copy to Plaintiff via US Mail. Signed by Magistrate Judge Mark J. Dinsmore on 3/27/2020.(SWM) (Entered: 03/30/2020)
04/27/2020	42	RESPONSE in Opposition re 31 MOTION for Summary Judgment , 29 MOTION for Summary Judgment , filed by Plaintiff ABBRELLA FAITH CAPPS. (Attachments: # 1 Envelope)(NAD) (Entered: 04/28/2020)
05/08/2020	43	REPLY in Support of Motion re 31 MOTION for Summary Judgment , filed by Defendant MICHAEL PERSON. (Esenwein, Jill) (Entered: 05/08/2020)
05/11/2020	44	BRIEF/MEMORANDUM in Support Reply in Support of Motion re 29 MOTION for Summary Judgment , filed by Defendant HOLLY CALHOUN. (Borek, Rosemary) (Entered: 05/11/2020)

08/21/2020	45	ORDER - GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT. For the foregoing reasons, Defendant Holly Calhoun's Motion for Summary Judgment, (Dkt. 29), is GRANTED. Defendant Dr. Person's Motion for Summary Judgment, (Dkt. 31), is DENIED as to Ms. Capps' pain-related claims for the second period of incarceration, but GRANTED as to his treatment of her during the first and third periods of incarceration. The pain-related claims against Dr. Person shall proceed to settlement or trial if one is necessary. The Court prefers that Ms. Capps be represented by counsel at a settlement conference. The Court has prepared a form motion to be used by indigent litigants seeking the appointment of counsel. The form requests the information necessary for the Court to determine the merits of the motion, and it requires the litigant to acknowledge important conditions of the appointment of counsel. Ms. Capps shall have through September 4, 2020, by which to either return a completed motion for counsel form to the Court or object to the recruitment of counsel on her behalf. The Clerk is directed to include a copy of the motion for counsel form with Ms. Capps' copy of this Order. Copy to Plaintiff via US Mail. Signed by Judge Tanya Walton Pratt on 8/21/2020. (Attachments: # 1 Blank Motion for Assistance with Recruiting Counsel) (NAD) (Entered: 08/21/2020)
09/03/2020	46	Correspondence REQUESTING COPY of Case Docket Sheet, filed by ABBRELLA FAITH CAPPS. Copy/Copies provided via US Mail. (Attachments: # 1 Envelope, # 2 Public Docket Sheet) (NAD) (Entered: 09/03/2020)
09/18/2020	47	MOTION for Blank Motion for Counsel Which Was Not Received as Ordered, filed by Plaintiff ABBRELLA FAITH CAPPS. (Attachments: # 1 Envelope)(NAD) (Entered: 09/18/2020)
09/22/2020	48	ORDER - Plaintiff Abbrella Capps's motion for a blank motion for counsel form, dkt. [47], is GRANTED. Ms. Capps shall have through October 21, 2020, to either return the completed form to the Court or object to the recruitment of counsel on her behalf. The clerk is directed to include a copy of the motion for counsel form with Ms. Capps' copy of this Order. Copies to Plaintiff via US Mail. Signed by Magistrate Judge Mark J. Dinsmore on 9/22/2020. (SWM) (Entered: 09/23/2020)
09/29/2020	49	MOTION for Final Judgment Pursuant to Rule 54(b), filed by Defendant HOLLY CALHOUN. (Attachments: # 1 Text of Proposed Order Order Entering Final Judgment for Holly Calhoun Pursuant to Rule 54(b))(Borek, Rosemary) (Entered: 09/29/2020)
10/01/2020	50	Order - Denying Defendant's 49 Motion for Final Judgment. In other words, Ms. Calhoun does not demonstrate that there is "no just reason for delay" for entering final judgment in her favor. Accordingly, Ms. Calhoun's motion to enter final judgment in her favor, dkt. 49 , is denied. However, the clerk is directed to terminate Ms. Calhoun as a defendant on the docket. (See Order.) Copy to Plaintiff via US Mail. Signed by Judge Tanya Walton Pratt on 10/1/2020. (NAD) (Entered: 10/01/2020)
10/08/2020	 51	MOTION for Assistance with Recruiting Counsel, filed by Plaintiff ABBRELLA FAITH CAPPS. (Attachments: # 1 Envelope)(NAD) (Entered: 10/13/2020)

Case #: 1:19-cv-00519-TWP-MJD