IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

NATHANIEL ALLEN LINDELL,

Plaintiff,

v.

JON E. LITSCHER, Secretary
Wisconsin Department of Corrections,
et alia,

Defendants.

ORDER

02-C-473-C

Currently before the court are defendants' motions to limit discovery and for protection from discovery (dkts. 40 & 45) and plaintiff's motion to extend all dates set at the August 31, 3004 scheduling conference (dkt. 47). For the reasons stated below, I am keeping the dates and I am limiting discovery, although not quite as tightly as defendants have requested.

This sprawling lawsuit is typical of those filed by this plaintiff in this court.[1] Plaintiff has filed another omnibus complaint challenging virtually every bad thing that has happened to him in prison. In a 71 page screening order, the court cut 16 named defendants and myriad claims, which still left 30 defendants and 30 claims. *See* May 26, 2004 order, dkt.

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[1] *See also* cases nos. 01-C-209-C, 01-C-521-C, 02-C-21-C, 02-C-79-C, and 02-C-459-C; plaintiff's recent petition for Sec. 2254 habeas relief, 04-C-249-C, is of a different ilk.

24. In response to my observations at the telephonic pretrial conference, plaintiff conceded that he has a history of throwing too many claims into the mix and overdoing discovery, which frequently has resulted in scheduling and discovery predicaments for plaintiff. He claimed, however, that that was then, this is now, and things have changed. *See* Tr. of Aug. 31, 2004 Tel. Prelim. Pretrial Conf., dkt. 43, at 8-9. Plaintiff then complained–and still complains–that the court's aggressive schedule and the defendants' proposed discovery limits are unrealistic and unfair.[2]

Notwithstanding his claim to the contrary, plaintiff has learned nothing in the two years since he filed this lawsuit. Nothing distinguishes plaintiff's pleadings or discovery requests from his *O'Donnell* lawsuit, in which this court observed that

> Plaintiff is a serial litigant who compulsively files lawsuits in state and federal court, raising a mixture of baseless claims and claims whose worth–or lack of worth–cannot be decisively determined at the screening stage. Despite plaintiff's claim that each of his lawsuits is meritorious, this is provably incorrect. One is left with the impression that no actual or perceived slight is too small for plaintiff to bring to court. This is unfortunate for several reasons, not the least of which is dilution: to the extent plaintiff may have issues that merit serious consideration by the court, they suffer by being packaged with large quantities of chaff. The leave to proceed

[2] Pursuant to the schedule, plaintiff must disclose his experts by Oct. 29; dispositive motions are due by November 22, and trial shall begin March 21, 2005.

> order in this case demonstrates that this is what happened here.

Dec. 22, 2002 Order in *Lindell v. O'Donnell*, 02-C-21-C, dkt. 69.

In the instant case, just like his past cases, plaintiff already has undertaken overbroad and poorly focused discovery requests. It's not quite as bad as plaintiff's *O'Donnell* case, in which the court observed that plaintiff had

> carpet-bombed the defendants with virtually unlimited discovery requests and has barraged the court with motions and briefs regarding his claimed need for more time, more information and more materials.

Id.

But plaintiff is on track to match his performance in *O'Donnell* if he has his way. This court has lectured plaintiff in the past about discovery limits, telling him that Congress enacted limits on civil discovery to rein in discovery abuses in civil litigation by abusive lawyers *and* abusive pro se litigants. In other cases I have admonished plaintiff to use his common sense, his vast experience as a serial litigant, and instructions from court orders to fashion a discovery strategy that will obtain the information that plaintiff actually needs to litigate his important claims, because this court will not reward plaintiff with relief from discovery limits just because he has so many different claims in his lawsuit. Plaintiff's track record with this court alone proves that he does *not* file only meritorious claims (as he

contends); therefore, it is not unfair to force plaintiff to make hard choices about what's really important to him.

Defendants have asked plaintiff to agree to a limit of 50 interrogatories, 50 document requests and 50 requests for admission (RFAs), with the understanding that he could seek leave of court to exceed these limits. Defendants also want plaintiff to agree to address each discovery request to a single, particular defendant. Although this last request makes sense in isolation, given plaintiff's hand-grenade approach of demanding that all defendants respond to all discovery requests, it doesn't mesh well with the proposed numerical limits. Defendants' proposal would allow less than two interrogatories, document requests and RFAs per defendant, with 30 different claims still in play. Additionally, pro se prisoner plaintiffs are not entitled to preliminary disclosures under Rule 26(a)(1), so they have a greater need for discovery than other civil litigants.

Although defendants' numbers are too tight, their theory is sound: firm limits on discovery are a viable method by which to force plaintiff to focus on viable claims against viable defendants rather than continue with expensive, time-consuming discovery on weak claims against tangential actors.

Therefore, I will allow plaintiff to propound a total of 100 interrogatories (with each subpart counted separately) and 100 RFAs (with each subpart counted separately). Plaintiff may allocate his interrogatories and RFAs between defendants and claims however he wishes. Plaintiff may name by name up to five defendants in a single interrogatory or a single RFA

without having it count as more than one. Each additional defendant above five counts separately. (For example, an RFA naming five defendants counts against the total as one; an RFA naming six defendants counts as two; an RFA naming ten defendants counts as six; a request for admission naming 26 defendants counts as 20).

Plaintiff may make up to 60 requests for the production of documents. There shall be no "five-for-one" special for document requests because discoverable documents are of different nature than interrogatory answers and admissions: either the documents already exist or they don't, and documents produced by one defendant may be used against others if plaintiff lays the proper evidentiary foundation. Sixty document requests should be more than enough to exhaust the universe of documents relevant to plaintiff's important claims. Additionally, document requests often impose a significantly higher burden on the responding party than simply answering an interrogatory or RFA. It is easy to ask for "all documents relevant to *x* during time period *y*," but it can be an incredible burden to conduct a search that uncovers all documents responsive to the request. Therefore, a lower limit on document requests is more fair to the defendants.

It flows from all this that defendants are entitled to protection from plaintiff's request for production made pursuant to F.R.C.P. 26(a)(1)(A) - (D). As defendants point out, Rule 26(a)(1)(E)(iii) explicitly excepts pro se prisoner lawsuits from the requirements of the rule. This makes sense, because Rule 26(a)(1) is "the equivalent of court-ordered interrogatories," Advisory Committee Notes to the 1993 Amendments. To allow any given prisoner litigant

to use Rule 26(a)(1) would impose an unnecessary and perhaps extraordinary burden on an institutional defendant. To allow this plaintiff in this prodigious lawsuit to use Rule 26(a)(1) would be an abuse of discretion by the court.

Plaintiff claims that it would be more efficient if the defendants voluntarily provided the information disclosing their justification for "burdening his rights," *see* dkt. 47 at ¶ 4. Plaintiff has got it backwards: *his* failure to file a terse, well-focused complaint does not create a problem for *defendants* to solve. Yet again, plaintiff has chosen to proceed against dozens of defendants on dozens of claims of retaliation, excessive force, interference with mail, and violations of the of the RLUIPA, the Free Exercise, Establishment and Equal Protection Clauses. It would be the epitome of inefficiency to dump this bloated and scattershot complaint at defendants' feet and direct them to prove that plaintiff's allegations are not true. Just because plaintiff survived initial screening under Rule 8 does not require this court to indulge him with extra discovery or extra time so that he may pursue each and every claim until he is satisfied with the state of the record.

Finally, plaintiff is not entitled to a looser schedule in this case. Plaintiff stated that he needs more time because: he cannot get carbon paper; writing by hand in triplicate 80 page documents is time-consuming; and, he wants to file his own motion for summary judgment in his case

> because I don't want to go to trial and have to present all this evidence that I can't present. I can't subpoena witnesses, I can't do any of that stuff. I should be able to go to court and [say]

> "here's my documents, here's the evidence, I'm entitled to relief."

Transcript of pretrial conference, dkt. 43 at 10.

Apparently, the reason plaintiff cannot get carbon paper is because he is beyond the legal loan limit. *See* Motion To Amend Scheduling Order, dkt. 47, at ¶¶ 1-2. Plaintiff's prediction that he will not be able to subpoena trial witnesses similarly is based on having gone deeply into the hole on legal loans. As the court of appeals made clear in remanding this case, plaintiff has no constitutional entitlement to a subsidy to prosecute this suit; like any other litigant, he must decide which of his legal actions is important enough to fund. *Lindell v. McCallum*, 352 F.3d 1107, 1111 (7th Cir. 2003). In other words, now that plaintiff predictably and improvidently has dug himself into this hole, it is *not* up to the state or this court to throw him a ladder. No one has a constitutional right to *carte-blanche* gold-standard litigation, no matter how potentially important the issues he raises in his civil complaint. Life is full of tough choices, and pro se prisoner litigation is no exception.

Plaintiff's repeated invocation of *Donald v. Cook County Sheriff's Department*, 95 F.3d 548, 555-56 (7th Cir. 1996) misses the point. Although plaintiff vociferously disagrees, this court has provided and will continue to provide "fair and meaningful" consideration of his claims. This court has put him on its usual scheduling track toward trial. The fact that plaintiff had a looser schedule in one of his smaller previous cases is an irrelevant happenstance. This is one of the fastest federal courts in America, notorious for scheduling

its trials aggressively and holding parties to their deadlines. That plaintiff was lucky enough to get some breathing room in a previous case does not exempt him from this court's ordinary scheduling practices. It could have been worse: on September 15, 2004, this court set November 15, 2004 as the trial date for a civil complaint filed on June 12, 2004 in *McKeown v. Sears Roebuck & Co.*, 04-C-461. *McKeown* is not directly comparable to plaintiff's lawsuit, but it illustrates that this court, after assessing each case's circumstances, uses its discretion to set the quickest trial date that in the court's view allows adequate preparation by each side. That is exactly what happened here. *See* Transcript of pretrial conference, dkt. 43, at 8-9, 11-12, 16-17 and 19-20.

Additionally, plaintiff's plan to file a multipart summary judgment motion in a case where defendants likely will contest each of plaintiff's proposed facts is an unrealistic and misguided expenditure of his scarce time and energy. I infer that plaintiff feels compelled to pursue summary judgment proactively not just because he thinks he is entitled to judgment pursuant to Rule 56, but also because he cannot afford to take this case to trial. But this court is no more obliged to indulge plaintiff's misdirected use of time and energy than it is to indulge his misdirected discovery requests.

Finally, I note that plaintiff already has generated and submitted a half dozen prisoner affidavits in support his summary judgment motion. *See* dkts. 49-53 (plus the currently undocketed affidavit of Rodosvaldo Pozo). Perhaps plaintiff actually can keep up with the

tight schedule, even pursuing his own pell-mell agenda. If not, he could always take the court's advice and narrow his lawsuit to the most important claims.

The bottom line is that plaintiff is not entitled to as much time or as much discovery as he claims to need. This is not exactly news: this court has been admonishing plaintiff for years to tighten up his helter skelter litigation tactics. This case is no different.

ORDER

Therefore, it is ORDERED that defendants' motion to limit discovery and for protection from discovery are GRANTED and plaintiff's motion to amend the scheduling order is DENIED.

Entered this 20th day of September, 2004.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge