

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

AARON A. KREILKAMP,

Plaintiff,

v.

ROUNDY'S, INC.,

Defendant.

ORDER

05-C-425-C

This is a civil action for injunctive and monetary relief brought under Title VII, 42 U.S.C. § 2000e 2(a)(1). Plaintiff is representing himself. Now he has submitted an undated letter postmarked November 9, 2005, a copy of the discovery materials and responses to interrogatories he intends to provide defendant in response to its discovery requests, and a letter dated November 15, 2005.

Plaintiff's letter postmarked November 9, 2005, does not bear any indication that he served it on Laurie Petersen, counsel for defendant, as plaintiff is required to do. Therefore, the court cannot consider this letter.

With respect to plaintiff's responses to defendant's discovery requests, I call plaintiff's attention to the first paragraph on page 10 of the magistrate judge's preliminary pretrial

conference order dated October 18, 2005, which reads in part:

The court does not want the parties to file their discovery material with the court, *except to support some other matter in this lawsuit, such as a summary judgment motion.* (Emphasis added.)

No one has moved for summary judgment in this action or filed any other kind of motion that would require the court to refer to the discovery materials plaintiff is providing the defendants. I note that plaintiff has written on the bottom of the cover letter accompanying his discovery materials, “If I have made any mistake I hope you will let me know.” I presume this statement is directed at the court. However, this court is not permitted to give plaintiff legal advice or give approval or disapproval to his communications with the defendant before he sends them to the defendant. Therefore, I have made no assessment of plaintiff’s discovery responses and will not pass judgment on their sufficiency at this time. If defendant is not satisfied with plaintiff’s responses to its discovery requests, it is required to contact plaintiff to attempt to work out the matter informally. Only if informal resolution is not reached is any party to communicate the discovery dispute to the court, supply the relevant discovery requests and responses and ask that the court intervene to resolve it. See Preliminary Pretrial Conference Order, p.9, ¶ 2.

In his November 15 letter, which appears to have been served on opposing counsel, plaintiff says,

I ask for a Motion to Leave to Amend Complaint against Roundy’s, Inc. for

approaching my witness Mr. Bill Nelson, through the manager of the Copps Store on Shopko Dr., Madison, WI. The reason I ask your court for this amended motion is, I feel that Roundy's Inc and their attorneys are unduly harassing Mr. Nelson. I wish your honor to rule on this amended complaint. I am sending with this request the handwritten and signed statement of Mr. Bill Nelson. The statement is typed as well, so there will be no misunderstanding. I ask the court to let me know if I have or had made any mistakes in this or any request before your honor's court.

The statement of Mr. Nelson attached to plaintiff's letter reads,

I, William Nelson, received a phone call on the evening of November 14, 2005, at approximately 6:30 PM, from Copps Manager Will Buchanan. First, he asked if I would come in to work at 10 AM on Tuesday, November 15th. Then, he changed his wording from coming in to work to coming in to speak with an attorney in regards to another associate. I first told him I would come in, thinking it was to work, then I thought about what Will had said, so I called right back and told Tammy Braxton, who answered the phone, that I had a prior commitment and couldn't come in. I then called Aaron Kreilkamp and alerted him to the phone call I had received from Mr. Buchanan.

As an initial matter, it appears again that plaintiff is looking to the court to instruct him what to file or that he is asking the court to pass judgment informally on the sufficiency of the papers he has submitted in connection with this lawsuit. As noted above, it is not the court's role to act as plaintiff's lawyer. Its role is to resolve impartially the dispute between two parties to a lawsuit, taking into account the factual evidence and the applicable law. To the extent that plaintiff appears to be asking for an order prohibiting counsel for the defendant from questioning plaintiff's co-workers about matters relating to this lawsuit, I construe his letter to include a motion for a protective order pursuant to Fed. R. Civ. P.

26(c). (A party's complaints about the manner in which the opposing party is collecting information from his witnesses is not properly raised in a motion to amend a pleading.)

Motions for protective orders are proper in situations where court intervention in the discovery process is necessary "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26(c). Plaintiff has not made such a showing in this case. One party to a lawsuit cannot obtain a protective order to prohibit the opposing party from interviewing potential witnesses about matters pertaining to a lawsuit. If a potential witness does not wish to speak informally to one party or another in the lawsuit, the witness has the right to decline so to speak. In that case, if the party wished to pursue the matter, it would have to subpoena the witness for deposition and give advance notice of the planned deposition to the other parties in the suit in accordance with Fed. R. Civ. P. 30. Because plaintiff has made no showing that defendant's lawyer is engaging in conduct requiring a protective order, I will deny his motion.

ORDER

IT IS ORDERED that plaintiff's motion to amend his complaint, construed as a

motion for a protective order pursuant to Fed. R. Civ. P. 26(c), is DENIED.

Entered this 21st day of November, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge