

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

JAMES J. KAUFMAN,

Plaintiff,

v.

JEFFREY PUGH, *et al.*,

Defendants.

ORDER

11-cv-168-bbc

Plaintiff James Kaufman is proceeding on claims that prison officials denied his rights under the First Amendment and Religious Land Use and Institutionalized Persons Act by denying his requests to form an atheist study group and possess a “Knowledge Thought Ring” and by refusing to make atheist books donated by plaintiff available to the inmates at the Stanley Correctional Institution. Now before the court is plaintiff’s motion to compel discovery, dkt. 19, motion to substitute a defendant, dkt. 24 and motion to stay the summary judgment proceedings, dkt. 38. For the reasons stated below, I will deny all three motions.

I. Motion to Compel and Request for Production of Documents

A. Defendant Lindgren

Plaintiff moves to compel defendant Lindgren to answer interrogatories Nos. 1, 4, 5, 6, 7, 13, 17 and 18. Because defendant Lindgren agreed to attempt to obtain further information regarding request Nos. 1, 6 and 7 based on plaintiff’s clarifications (and has now provided those supplemental responses), no ruling on these requests is necessary. Interrogatories Nos. 4, 5 and 18 have been answered and in the case of interrogatory No. 18, supplemented adequately.

In interrogatory No. 13, plaintiff requests information regarding the number of inmates for each designated religious preference, including each individual belief listed under the “other”

designation. Defendant Lindgren has answered plaintiff's request. Although plaintiff disagrees with the response, plaintiff's mere disagreement, without more, is not a basis for a motion to compel. *See Berning v. General Motors Corp.*, 2007 WL 1875877, *3 (N.D. Ind. 2007). Plaintiff asks in interrogatory No. 17 for the name, title and address of each individual who may have any information relating to the facts of this action, the subject matter about which the individual may have knowledge, the substance of the facts and opinions to which the individual has knowledge and a summary of the grounds for each fact and opinion. Defendant Lindgren objects on the grounds that the request is overly broad and burdensome, vague, ambiguous and requires speculation. I agree that this request is overly broad and no additional response is necessary to this interrogatory.

B. Defendant Pugh

Plaintiff moves to compel defendant Pugh to answer interrogatories Nos. 1, 4, 5, 10, 11, 12, 14, 15, 16 and 17. Defendant Pugh agreed to attempt to obtain further information regarding request No. 1 and supplement his response to Nos. 14 and 15, and has now provided those supplemental responses.

Defendant Pugh objects to plaintiff's interrogatories Nos. 4, 5 and 16 in which plaintiff asks for each atheist publication available to inmates at Stanley Correctional, for each religious publication donated from September 1, 2009 to December 31, 2010 and for any documentation maintained by the SCI chapel regarding denied requests for religious emblems at SCI from September 1, 2009 through December 31, 2010, as overly broad and burdensome, vague, ambiguous and requires speculation. Having reviewing plaintiff's requests, I agree with

defendants that these requests are overly burdensome and vague. Interrogatory No. 10 asks defendant Pugh for the current location of the three atheist books plaintiff donated to the SCI library. Defendant Pugh responded that he does not know and the information was not available to him upon reasonable inquiry. Defendant Pugh is not required to set forth the efforts he used to attempt to obtain the information and this court will not compel him to do so. Defendant Pugh says the information was not available to him upon reasonable inquiry and the court accepts this answer. Finally regarding interrogatories Nos. 11, 12 and 17, the court finds that defendant Pugh has adequately answered and supplemented as appropriate each request and no additional response is needed.

C. Defendant Ozanne

Plaintiff moves to compel defendant Ozanne to answer interrogatories Nos. 1, 3, 5, 6, 7 and 8. Defendant Ozanne has now provided supplemental responses to interrogatory No. 1, 5 and 6. In interrogatory No. 5, plaintiff asks defendant Ozanne to explain why the Department of Corrections has not revised its religious practices policy to reflect that atheism is a religion as agreed to in W.D. Wis. Case No. 03-C-27-C. Defendant states that this request is overly broad, vague, ambiguous and requires speculation. I agree that this interrogatory requires defendant Ozanne to speculate as to why such a policy has not been created, therefore he will not be required to respond. Regarding interrogatories Nos. 3 and 8, in addition to the answer given in defendant Ozanne's response to plaintiff's request, the supplemental responses provided in defendants' response to plaintiff's motion to compel are adequate to clarify the attorney-client privilege and work-product doctrine objections assert by defendants in their response.

Interrogatory No. 7 asks defendant Ozanne for each inmate in the Religious Preference Database who has selected and/or designated their religion to be Atheist, Humanist, Secular Humanist, Agnostic, or Freethinker. Defendant Ozanne answers that the Department of Corrections does not maintain a database that could track atheist inmates. The defendant cannot provide information to plaintiff that it does not have. As previously stated, although plaintiff may disagree with an answer to a discovery request, this disagreement, by itself, is not a basis for the court to order a responding party to change his answer.

D. Defendant Clements

Plaintiff moves to compel defendant Clements to answer interrogatories Nos. 1, 6, 8 and 9. Defendant Clements agreed to attempt to obtain further information regarding Interrogatory No. 1 based on plaintiff's clarification and has now provided a supplemental response. Interrogatory 6 asks "If informal discussions are sufficient to meet the needs of atheist inmates, explain, in detail, why such informal discussions are also not sufficient to meet the needs of inmates who may be Catholic, Protestant, Muslim, Pagan, Buddhist or Native American." This is an intriguing question for several reasons, but plaintiff has framed it and aimed it in a way that is not likely to adduce the information he seeks. Defendant Clements responds that as a committee member of the Religious Practices Advisory Committee, he was not involved in determinations related to the religious needs of any religious umbrella group. Furthermore, Clements states that the RPAC is an advisory committee that does not establish policy. Again, plaintiff may not be satisfied with this answer, but it sufficiently answers plaintiff's

interrogatory. Defendant Clements has provided supplemental responses which adequately respond to plaintiff's requests in interrogatories Nos. 8 and 9.

One additional matter requires comment. To the extent plaintiff is asking for documents that defendants claim are subject to the attorney-client privilege, plaintiff's request is not specific enough for the court to address at this time. Plaintiff needs to more narrowly tailor his interrogatories and requests for production of documents to the issues involved in this lawsuit.

II. Motion for Substitution

Plaintiff has filed a document titled "Motion for Order of Substitution Pursuant to F.R.C.P. Rule 25(d)," dkt. 24, in which he seeks to have defendant Ozanne replaced in his official capacity as Department of Corrections deputy secretary by his successor in that position, defendant Charles Cole. However, at this point it seems that plaintiff's claim against Ozanne is an individual capacity claim, and as defendants point out, it should not be necessary to add the deputy secretary in his official capacity in order to provide equitable relief going forward. Plaintiff states that he has been unable to conduct discovery without Cole as a defendant, but he does not explain why he has been unable to get the documents he needs from the current defendants. Accordingly, I will deny his motion without prejudice, but will add Cole in his official capacity if it later becomes apparent that it is necessary to do so.

III. Motion to Stay Summary Judgment

Plaintiff has also filed a motion to stay a decision on defendants' motion for summary judgment, dkt. 38, stating that he needs resolution of his other motions before responding and

that he is being denied a legal loan, which means that he is not able to file a response. However, since filing his motion, plaintiff was able to submit extensive response materials and it appears there is no reason to stay the summary judgment. Plaintiff's motion will be denied.

ORDER

It is ORDERED that:

- (1) plaintiff James Kaufman's motion to compel discovery, dkt. 19, is DENIED.
- (2) plaintiff's motion for substitution of defendant under Fed. R. Civ. P. 25, dkt. 24, is DENIED.
- (3) plaintiff's motion for a stay of the summary judgment proceedings, dkt. 38, is DENIED.

Entered this 12th day of June, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge