

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

ROBERT R. OLESON,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

ORDER

05-C-33-C

This is a Federal Tort Claims Act case in which plaintiff contends that while he was confined at FCI-Oxford, he suffered an electrical shock while using an improperly grounded clothes dryer. (Plaintiff now is incarcerated at USP-Terre Haute). Dispositive motions are due in this case no later than December 9, 2005, and the deadline for completing discovery is March 31, 2006.

Plaintiff has filed a "Motion to Compel Discovery," asking the court to order the Bureau of Prisons to divulge the addresses of inmates Christopher Covey and James Howard and to issue an order allowing him to correspond with these inmates and with an Officer A.J. Vargas, a Senior Operations Officer at FCI-Oxford.

Plaintiff filed an identical motion on September 15, 2005; on September 19, 2005, Judge Crabb denied it as premature. In her order, Judge Crabb accepted that Covey, Howard and Vargas each may have been witnesses to the incident at issue in this case. However, she noted that plaintiff had not submitted interrogatories pursuant to Fed. R. Civ. P. 33 to the defendant

United States of America requesting the addresses for inmates Covey and Howard. She told plaintiff that until he established that he had served defendant's lawyer with interrogatories and had allowed the government thirty days to respond to them, he could not file a motion to compel the government to disclose the information. With respect to Officer Vargas, Judge Crabb noted that plaintiff had made no showing that anyone was preventing him from writing directly to Vargas at Oxford. She stated that even if plaintiff made such a showing, the court would not consider issuing an order directing the government to allow plaintiff to communicate with Vargas until the government had clarified whether Vargas is a witness for the government. She noted that if Vargas was a government witness, then plaintiff would have to use formal discovery, that is interrogatories, requests for admissions or a deposition, to obtain any information Vargas possessed about the incident. If, however, Vargas was not a witness for the government but rather a potential witness for plaintiff, then the government could not prohibit plaintiff from communicating directly with Vargas absent a showing to this court of good cause.

In support of his second motion to compel, plaintiff has submitted a copy of an "Inmate Request to Staff" form he completed and gave to his counselor at Terre Haute on September 8, 2005. In the request, plaintiff states,

I am in the middle of a tort action against the B.O.P. because of an electrical shock I received at Oxford, and I need permission to correspond with the witnesses so I can obtain dispositions from them. Christopher Covey, 02034-049, James Howard, No. UNK., and Senior Operations Officer A.J. Varga. I need this to be processed in a timely manner as the dispositions have to be filed in November with the court. I thank you in advance for your time and effort concerning this matter and look forward to hearing from you soon. [*all sic*]

According to plaintiff, his counselor returned the request to him without acknowledging receipt of it. Also, plaintiff submitted a copy of what appears to be a Bureau of Prisons Program Statement governing inmate to inmate correspondence. Section 14.b.(1) of the statement provides that “[t]he appropriate unit manager at each institution must approve of the correspondence if both inmates are housed in federal institutions and both inmates are members of the same immediate family or are a party or witness in a legal action in which both inmates are involved.”

Plaintiff has put the cart before the horse. Plaintiff’s counselor ultimately may have to approve plaintiff’s correspondence with inmates Covey and Howard, but he is not the person obliged to provide plaintiff with their addresses. As Judge Crabb told plaintiff in the September 19 order, plaintiff has to ask for the addresses by serving interrogatories on Assistant U.S. Attorney Steven O’Connor, the lawyer for the defendant. An “interrogatory” is the term used for a written question that one party in a lawsuit sends to his opponent, and which the opponent must answer in writing within 30 days. *See* Federal Rules of Civil Procedure # 33. This court does not give advice to litigants, but I will note generally that most prisoner litigants obtain information such as addresses by sending a document entitled “Interrogatories” or “First Set of Interrogatories” to the assistant United States attorney; this document would contain a set of numbered questions seeking specific information. For example, this would be the form of a proper interrogatory: “(1) What is the current mailing address for Inmate John Doe?”

If plaintiff sends interrogatories to AUSA O’Connor, and the AUSA provides plaintiff with the requested addresses, then plaintiff will be able to show his counselor that he is engaged

in a lawsuit in which Covey and Howard are potential witnesses, that plaintiff needs to communicate with these inmates about his lawsuit and that he needs permission to send his letters to them.

As for plaintiff's request for a court order directing prison officials to allow him to communicate with Officer Vargas, plaintiff still has made no showing that he has written to Vargas and that his communication has been prohibited. Therefore, he has made no showing of a need for court intervention.

ORDER

IT IS ORDERED that plaintiff's "Motion to Compel Discovery" is DENIED as premature.

Entered this 8th day of November, 2005.

BY THE COURT:
/s/
STEPHEN L. CROCKER
Magistrate Judge