

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

JAMES J. KAUFMAN,

Plaintiff,

ORDER

v.

06-C-205-C

THOMAS E. KARLEN; RANDALL R. HEPP;
CYNTHIA L. O'DONNELL; RICHARD RAEMISCH;
DANIELLE LACOST; MATTHEW FRANK;
PERRY NICHOLS, APRIL OLIVERSON, and
unidentified prison staff members,

Defendants.

Plaintiff James J. Kaufman is proceeding in this action against defendants on claims that they violated his rights under the First Amendment's establishment and free speech clauses, retaliated against him for exercising his right of access to the courts and offended his Eighth Amendment rights by refusing to give him soap. In a preliminary pretrial conference order entered on September 20, 2006, Magistrate Judge Stephen Crocker gave defendants until October 6, 2006, in which to serve and file a letter identifying all John Doe defendants fitting the description provided in plaintiff's complaint. Plaintiff was given until October 16, 2006, in which to amend his complaint to include the names of the newly identified

defendants and defendants had until October 30, 2006, in which to file an answer to the amended complaint. Now plaintiff has filed a letter dated October 13, 2006, which I construe as a motion for an enlargement of time in which to file an amended complaint. In addition, he has filed a motion to strike defendants' answer to his original complaint and requested in a letter dated October 2, 2006, for an order requiring prison officials to allow him to correspond with potential witnesses. I will address each matter in turn.

In support of his motion for more time in which to amend his complaint, plaintiff states that he did not receive defendants' John Doe identification list until October 13, 2006, just three days before his amended complaint was due to be filed. He states that this is too little time to prepare an amended complaint in accordance with the preliminary pretrial conference order and file it with the court. Because it was the court's intention that plaintiff would have 10 days within which to make the appropriate amendments to his original complaint after learning the names of the Doe defendants, I will grant him an enlargement of time to October 23, 2006, in which to serve and file his amended complaint. Plaintiff is reminded that he is to make no changes to his original complaint other than to insert the names of the new defendants in the caption of the complaint and in those places in the body of the complaint that relate their alleged wrongdoing, and to identify the pleading as an amended complaint. If plaintiff does not file such an amended complaint by October 23, 2006, then I will dismiss all of plaintiff's claims against the Doe defendants.

Plaintiff's "Motion to Strike Answer" will be denied. Plaintiff contends that defendants failed to respond to paragraphs 1-6, 13-18 and 21-23 of his complaint on the ground that the assertions constituted legal conclusions to which no answer was required. In truth, with the exception of paragraph 23, defendants admitted or denied all allegations in paragraphs 1-6, 13-18 and 21-23 to the extent that the paragraphs contained factual allegations requiring a response. With respect to paragraph 23, defendants asserted that the allegations constitute conclusions of law to which no response is required. I am not inclined to strike defendants' answer because they deemed no response necessary to plaintiff's assertion in paragraph 23 of the complaint that the defendants are being sued in their official and individual capacities.

In addition, plaintiff complains that defendants' answer should be struck because eleven separate denials were based on lack of knowledge or information. However, Fed. R. Civ. P. 8(b) states in relevant part,

A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial.

Because defendants have not violated the rules governing pleadings, there is no basis upon which to strike their answer.

Finally, plaintiff complains that prison officials are refusing to permit him to "obtain

witness statements by mail.” He states that each letter he has attempted to mail to a witness has been returned to him by staff at the Wisconsin Secure Program Facility for the reason that there is no documentation showing his need to communicate with the particular witnesses. An “Interview/Information Request” form attached to plaintiff’s letter reveals that plaintiff and the prison business office have had the following exchange on the subject.

Plaintiff:

I just sent you Judge Crabb’s order in case 06-C-205-C. You returned it to me. You also returned both envelopes addressed to witnesses. So, to clarify, WSPF is not going to allow me to contact witnesses to obtain witness statements in this case? (I’ll be notifying Judge Crabb of this.)

Business Office:

The court order you provided does not state the people you were trying to contact were witnesses. Please provide documentation that states corresponding with them is necessary. You may use your writing materials.

It is not clear which of Judge Crabb’s orders plaintiff gave the business office to support his request for permission to correspond with other inmates. However, in the many years this court has been presiding over prisoner litigation, it has not been necessary to provide a prison business office with an order directing officials to allow an inmate to write to potential witnesses to his claims. Given the prison’s general authority to inspect outgoing mail for contraband and to limit expenditures from its legal loan program to costs strictly associated with an inmate’s legal activities, the business office already should be in a position to insure that plaintiff’s communications to potential witnesses are what he says they are.

There should be no need for prisoner litigants to obtain permission from this court to investigate the existence or lack of existence of potential witnesses to their claims. Therefore, I am requesting defense counsel Lara Sutherlin promptly to look into the concerns expressed by the business office and work with it to insure that plaintiff is permitted to communicate with persons he legitimately believes may be witnesses in his case. I will assume that the matter will be resolved informally unless counsel or plaintiff notifies the court, in writing, no later than October 30, 2006, that he or she has been unable to reach a suitable resolution.

ORDER

IT IS ORDERED that

1. Plaintiff's motion for an enlargement of time in which to file an amended complaint is GRANTED. Plaintiff may have until October 23, 2006, in which to file an amended complaint identifying the defendants he referred to in his original complaint as John Does. Defendants may have twenty days following informal service of the amended complaint upon them in which to serve and file a responsive pleading.
2. Plaintiff's motion to strike defendants' answer is DENIED.
3. Plaintiff's motion for an order requiring prison officials to allow him to correspond with potential witnesses is DENIED without prejudice. Defense counsel is requested

promptly to look into the concerns expressed by the business office and work with it to insure that plaintiff is permitted to communicate with persons he legitimately believes may be witnesses in his case.

Entered this 18th day of October, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge