

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

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JUAN M. PÉREZ,

Plaintiff,

ORDER

v.

06-C-248-C

MATTHEW J. FRANK, RICHARD RAEMISCH,  
CATHERINE FARREY, LIZZIE A. TEGELS,  
SUE NAULT, MELANIE FAUST, MARK  
TESLIK, GREG GRAMS and TIMOTHY LUNDQUIST,

Defendants.

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In this case, plaintiff is proceeding on claims that the defendants violated his rights under the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA) by refusing to provide him with a variety of religious programs and accommodations and refusing to allow him to possess a digital Qur'an player and by denying him mail sent to him from outside the prison. Now plaintiff has written to request a blank signed subpoena form so that he can obtain documents from "a Department of Corrections employee who is not a party to this action." He asks as well how he is to serve his subpoena on this employee if he cannot obtain information about the employee's home address.

Before I issue the requested subpoena to plaintiff, it will be necessary for him to advise the court why he believes the documents he wants are not in the control of the defendants in light of the fact that they appear to be documents belonging to the Department of Corrections. If the documents plaintiff seeks to inspect are in the control of the defendants, then he should request the production of documents pursuant to Fed. R. Civ. P. 34, a copy of which is attached to this order. In his request, plaintiff should list in numbered paragraphs the precise documents he wishes to see and set forth "a reasonable time, place, and manner of making the inspection" of the documents he seeks to discover. Fed. R. Civ. P. 34(a). Plaintiff should note that Rule 34 does not require the defendants to provide him with free copies of the documents he wants. If he wishes to have copies of materials in the possession of the Department of Corrections for his own records, he will be responsible for paying the costs of duplicating the material.

Because plaintiff has not explained why he cannot obtain the documents he wants from the defendants rather than a non-party employee of the Department of Corrections, his request for a subpoena form will be denied without prejudice.

#### ORDER

IT IS ORDERED that plaintiff's request for issuance of a subpoena form so that he can subpoena documents from an employee of the Department of Corrections is DENIED

without prejudice to his renewing the request and explaining why he believes he cannot obtain the requested documents from the defendants by utilizing Fed. R. Civ. P. 34. The clerk of court is directed to refrain from issuing the requested subpoena at this time.

Entered this 27th day of November, 2006.

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

Rule 34. Production of Documents and Things and Entry Upon Land  
for Inspection and Other Purposes

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(a) Scope.

Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure.

The request shall set forth, either by individual item or by category, the items to be inspected, and describe each with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. Without leave of court or written stipulation, a request may not be served before the time specified in Rule 26(d).

The party upon whom the request is served shall serve a written response within 30 days after the service of the request. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties, subject to Rule 29. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for the objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(c) Persons Not Parties.

A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Rule 45.

May, 2006