

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

GARRY BORZYCH,

Plaintiff,

v.

MATTHEW J. FRANK, STEVEN B.
CASPERSON, RICK RAEMISCH,
PHILLIP KINGSTON, STEVEN
SCHUELLER and MIKE THURMER,

Defendants.

ORDER

06-C-475-C

Before the court is plaintiff's motion to compel discovery. *See* Dkt. 12. The state has responded by claiming the motion is premature because plaintiff did not attempt to resolve the dispute prior to filing his motion. For reasons stated below, I am granting, denying and staying different parts of plaintiff's motion.

As a technical matter, discovery did not even begin in this case until after the March 15, 2007 telephonic preliminary pretrial conference, held earlier today. *See* Notice Regarding the Telephonic Preliminary Pretrial Conference, served February 21, 2007. In this case, however, plaintiff filed his discovery demands early and defendants were amenable to responding. Had the parties waited until now, then the preliminary pretrial conference order would have reminded them of what they already should know: that they are supposed to attempt to work out discovery disputes before seeking court intervention. The court takes a more flexible view about meet-and-confer in prisoner cases, but in this case, I will not consider any future discovery

motions absent proof of a good faith attempt by the parties to resolve their differences before coming to court. That said, I am inclined to rule on the pending motion now just to get it resolved.

Plaintiff raises three objections to defendants' responses to his discovery requests. First, he objects to the scope and procedures outlined by the defendants in response to plaintiff's request for production of all documents possessed by defendants "concerning the religious emblem Thor's Hammer." Plaintiff quotes defendants' response, which refers to attached documentation and additional material that plaintiff will be permitted to examine but not keep or copy. Plaintiff did not attach any of the material to his motion, nor did he synopsise for the court the content of the material he was allowed to review but not copy. Plaintiff's sole complaint seems to be that the defendants are lying when they claim to have security concerns. Plaintiff wants his own copies of the restricted materials to keep in his cell.

This court is familiar with the dispute over Thor's Hammer from plaintiff's previous lawsuit. *See, e.g., Borzych v. Frank*, 04-C-632-C, 9/9/06 summary judgment order, dkt. 118, at 12-18. Plaintiff probably could have/should have included his current claims with his previous claims but he didn't, so here we are. To create a self-contained record in the instant case, I am directing defendants to provide for *in camera* review a copy of "Exhibit D," the restricted set of documents. Defendants also should submit a brief written explanation, to be served on plaintiff, as to why these documents are restricted and why Thor's Hammer is viewed as a security concern within the institution. Defendants may have until March 26, 2007 within which to file these documents and serve their explanation on plaintiff. If plaintiff wishes to reply to

defendants' response, first he actually must review carefully the materials in Exhibit D so that he has a foundation for claiming that review without photocopying is insufficient. Plaintiff's response is due not later than April 2, 2007. I will stay a final decision on this portion of this motion until the parties have had an opportunity to be heard further.

Plaintiff's second request is that this court compel production of any and all prior court rulings, *etc.*, concerning inmates' religious beliefs being violated/substantially burdened by WDOC. *See* Dkt. 12 at 2. Defendants object that this request is vague and overly broad. Defendants are correct. The dispute in the instant case is whether plaintiff should be allowed access to "Thor's Hammer" in a correctional institution. Other prisoners' disputes over other aspects of other religions are not relevant to resolving this dispute. If the defendants actually are aware of or have copies of court opinions regarding inmate access to Thor's Hammer while incarcerated, they must provide them to plaintiff. They are not, however, to do plaintiff's legwork for him if they do not have access to or are not aware of such opinions. Defendants may have 30 days after March 15, namely until April 16, 2007, within which to provide this information if they have it.

Third, plaintiff demands production of "any and all misconduct/incident reports that you were named in, whether while on or off duty, whether you were exonerated or not." *See* Dkt. 12 at 3. Defendants objected on relevance grounds. Defendants are correct. Such a broad-based search for dirt on an opponent is pointless and inadmissible. If any of the defendants ever has been written up or otherwise disciplined for conduct related to any inmate's religious practices or rights, this information alone would be discoverable. Defendants must provide this

information by April 16, 2007 if it exists. Otherwise, plaintiff is not entitled to the information sought.

ORDER

It is ORDERED that plaintiff's motion to compel discovery is GRANTED IN PART, STAYED IN PART and DENIED IN PART in the manner and for the reasons stated above.

Entered this 15th day of March, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge