

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

JONATHAN L. LIEBZEIT,

Plaintiff,

v.

MICHAEL THURMER and SAM APPAU,

Defendants.

ORDER

10-cv-170-slc

Plaintiff Jonathan Liebzeit was allowed to proceed on his claim that defendants violated his rights under the free exercise clause by denying his request to engage in group religious exercise and refusing to allow him to possess religious items. Now before the court are plaintiff's motion to compel discovery responses, dkt. 78, motion for use of release account fund, dkt. 79, and motion to extend dispositive motions deadlines, dkt. 80.

I. Motion to Compel

A. Requests for Production of Documents

Plaintiff moves to compel defendants to produce additional documents. He has submitted 37 requests for production of documents to defendants. In their response to plaintiff's motion to compel, defendants state that they have produced over 550 pages of responsive documents.

Plaintiff continues to assert that defendants have not provided the requested documents. Defendants respond that they have searched records at the Waupun Correctional Institution as well as records maintained in the Department of Corrections Central office, including historical records and files and that all documents responsive to plaintiff's requests have been produced.

Based on a review of the parties submission, the court concludes that defendants have sufficiently complied with plaintiff's requests for production of documents. The court cannot order a party to produce documents they do not have.

In his motion to compel, plaintiff asks the court to issue a subpoena duces tecum to compel Wisconsin Department of Corrections Secretary Rick Raemisch to produce certain documents. Defendants respond that they have searched for documents in Secretary's possession or control. The court will not issue a subpoena to Raemisch to produce any documents.

Finally plaintiff has requested documents relating to the total number of acts of violence within the last five years broken down by the seven Umbrella Religion groups. Defendants respond that a summary record of such information does not exist. Further, incident reports do not identify the religious affiliation of an inmate. Not only would a search of incident reports be overly burdensome, it would not uncover the information plaintiff seeks.

Defendants have put forth a good faith effort to produce all the documents that plaintiff has requested, even though some of the documents requested are not likely to lead to admissible evidence in this case. Therefore, plaintiff's motion to compel production of any further documents will be denied.

B. Interrogatories

In plaintiff's interrogatories numbers 2 and 3 directed to defendant Thurmer and 3 and 4 directed to defendant Appau, he asks if there is any other process besides filing a form DOC-2075 for an inmate to request that a new religious umbrella group be recognized or to add new religious property items to the approved list of religious property. Thurmer and Appau both

responded that an inmate must submit a DOC-2075 form. This response is adequate because it implies that there is no other process, and plaintiff may rely on this implication.

Plaintiff asks both Thurmer (interrogatory 6) and Appau (interrogatory 2) whether there was another religious property list besides the “DOC 309 IMP 6A-Addendum Religious Property Chart.” Defendants responded that the list was exhaustive but had been replaced by DAI Policy #309.61.02 effective July 20, 2010. This response is sufficient.

Interrogatory 7 states “In your official capacity as Warden, in supervising security measures and/or policies and procedures what are the reasons which prohibit security staff from becoming familiar with the symbols and meaning interpretation of the “Elder Futhark” Run Set (24 Rune symbols), the same as was done by security staff with “Aquarian” Tarot Card Deck (78 Tarot card pictures)?” Thurmer responded that the question was vague, ambiguous and required speculation. The court understands plaintiff to be asking why the security staff has not treated the “Elder Futhark” Run Set the same as the “Aquarian” Tarot Card Deck. Defendant Thurmer must answer this question.

Next, in interrogatory 8, plaintiff asks Thurmer the reasons a set of Runes was not added to the Religious Property Chart as allowable religious property. Thurmer states that he did not know because he was not involved in amending the religious property chart. This response is adequate.

Although not completely clear, interrogatory 12 seems to be asking why prohibiting personal possession of a Rune set prevent inmates from using the “Rune code.” Thurmer responded that there is nothing specific that prevents inmates from writing a code on a piece of paper but that there are penalties for unauthorized forms of communication. This response is sufficient to what is essentially a rhetorical question.

In plaintiff's interrogatories 9 and 10, he asks defendant Appau to identify "the religious preferences of all the Religious Volunteer who run the Pagan Umbrella Religion Group." Appau objects to this interrogatory as being ambiguous and not likely to lead to the discovery of admissible evidence. The court agrees that this interrogatory is not likely to lead to admissible evidence. Therefore, no response is necessary.

In interrogatory 12, plaintiff asks Appau what is the available storage space for group use religious items. Appau responded that there was sufficient storage space for group religious property in the storage cabinets and file cabinets in the Chapel Building. Plaintiff seeks an actual measurement. Such a measurement is not necessary.

II. Motion to use Release Account

The use of release account funds is governed by state law. See Wis. Admin. Code § DOC 309.466. According to § 309.466(2), "[r]elease account funds may not be disbursed for any reason until the inmate is released to field supervision, except to purchase adequate clothing for release and for out-of-state release transportation." The only exception is that release funds can be used to pay an initial partial filing fee under the 1996 Prison Litigation Reform Act. Because release funds cannot be used for any other reason, I will deny plaintiff's request to use his release funds to pay for photocopies and postage in this case.

III. Motion to Extend Deadline for Dispositive Motions

Plaintiff seeks an extension of the February 28 deadline for filing dispositive motions, contending that he was not able to inspect the documents until December 21, 2010. At this time, the court does not believe that an extension of the deadline which is over six weeks away is necessary.

ORDER

IT IS ORDERED that:

1. Plaintiff Jonathan Liebzeit's motion to compel defendant Thurmer to respond to plaintiff's interrogatory number 7 is GRANTED.
2. In all other respects, plaintiff's motion to compel, dkt. 78, is DENIED.
3. Plaintiff's motion for use of release account funds, dkt. 79, is DENIED.
4. Plaintiff's motion for an extension of the dispositive motion deadline, dkt. 80, is DENIED.

Entered this 7th day of January, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge