

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

JASON GOODE

v. PRISONER  
Case No. 3:04CV1524 (WWE) (HBF)  
WILLIAM FANEUFF, et al.

RULING ON PENDING MOTIONS

Pending before the court are plaintiff's motions to amend, for extension of time, for leave to take depositions, to stay, to compel and for default and defendants' motions for extension of time and for summary judgment. For the reasons set forth below, the defendants' motion for extension of time will be granted and the other pending motions will be denied.

I. Motion for Leave to File an Amended Complaint [doc. # 22]

The plaintiff seeks leave to file an amended complaint to add five defendants who were allegedly involved in the failure to protect him from assault on November 21, 2001. Under Rule 15(a) of the Federal Rules of Civil Procedure, the plaintiff must seek leave of court to file an amended complaint because the defendants filed an answer to the complaint prior to the plaintiff's filing of the motion to amend.

The plaintiff did not move for leave to amend to add claims against five new defendants until at the earliest September 28, 2005, the day he presumably handed the motion to prison officials

for mailing. Thus, these claims which relate to the assault of the plaintiff by another inmate in November 2001 are barred by the three year statute of limitations. See Lounsbury v. Jeffries, 25 F.3d 131, 134 (2d Cir. 1994) (applying Connecticut's three year statute of limitations to actions brought pursuant to 42 U.S.C. § 1983). Any attempt to add those claims to this action would be futile. See Forman v. Davis, 371 U.S. 178, 182 (1962) (the court considers such factors as undue delay, bad faith, dilatory motive, undue prejudice and futility of the amendment, in determining whether to grant leave to amend); Acito v. Imcera Group, Inc., 47 F.3d 47, 55 (2d Cir. 1995) (although the Federal Rules of Civil Procedure provide that leave to amend should be "freely given," Fed. R. Civ. P. 15(a), denial of a motion for leave to amend is appropriate where the proposed amendment would be futile). Furthermore, permitting the plaintiff to add new claims would unnecessarily delay the litigation of this action. The defendants have moved for summary judgment in this action. Thus, the court concludes that justice does not require that the plaintiff be permitted to file an amended complaint to add claims against individuals that are barred by the statute of limitations. The motion for leave to amend is denied.

## II. Motion for Leave to Depose Defendants [doc. # 25]

The plaintiff seeks to depose the three defendants named in the complaint as well as other individuals who are not parties to

this action. He asks the court to designate a person to record the deposition and seeks an attorney to conduct the deposition for him. He claims that he needs to conduct the depositions to prepare for trial, but does not identify the information he seeks to elicit through the depositions or how that information might relate to his claims.

The plaintiff does not indicate in his motion that he has sufficient funds to pay the deposition expenses. Although plaintiff has been granted permission to file his action *in forma pauperis*, 28 U.S.C. § 1915 does not authorize payment or advancement of discovery expenses by the court. See Beard v. Stephens, 372 F.2d 685 (5th Cir. 1967) (*in forma pauperis* status does not encompass affirmative assistance in conducting civil case); Coates v. Kafczynski, 2006 WL 416244, at \*2 (W.D. Mich. Feb. 22, 2006) holding that "court has no authority to finance or pay for a party's discovery expenses even though the party has been granted leave to proceed *in forma pauperis*") (citing cases); Tajeddini v. Gulch, 942 F. Supp. 772, 782 (D. Conn. 1996) (denying plaintiff's motion to depose defendants because plaintiff did not indicate how he would pay deposition expenses and *in forma pauperis* status does not require advancement of funds by the court for deposition expenses).

In addition, the plaintiff has not demonstrated that he is unable to obtain the information he seeks from these defendants using other methods of discovery. Because plaintiff does not

indicate that he has sufficient funds to pay the required expenses to depose the persons identified in his motions, plaintiff's motion is denied without prejudice.

III. Motion for Extension of Time [doc. #33]

The defendants seek an extension of time until May 8, 2006, to file their response to plaintiff's February 20, 2006 discovery request. The motion is granted absent objection.

IV. Motions to Compel and for Default [docs. ## 34, 35]

The plaintiff claims that the defendants objections to discovery requests numbered one through six in the document dated February 20, 2006 and entitled "Interrogatories to Defendant(s) (Faneuff, (Butler, (Myers), (Coate)" are unreasonable. He asks the court to default the defendants for failing to answer the requests and also seeks a court order compelling the defendants to respond to the requests.

As a preliminary matter, the court notes that although the plaintiff entitled his discovery request as Interrogatories, he seeks the production of documents from the defendants. In addition, the requests are directed to Faneuff, Myers, Butler and Coates. Myers, Butler and Coates are not defendants in this matter. Interrogatories and Requests for Production may be served on parties only. See Rules 33(a) and 34(a), Fed. R. Civ. P. provides that interrogatories be served on parties only.

A review of defendant Faneuff's responses to plaintiff's request for documents reveals that he objected to the production

of his own training records and records documenting Inmate Lawson's disciplinary history and separation status on the ground that disclosure of these records would jeopardize safety and security. Defendant Faneuff also objected to plaintiff's request for documents "to certify [his] compliance as a supervisor with[] the requirements of Conn. D.O.C. Directive 2.7 sub-section (F)" as unduly broad, vague and not limited in time. Mot. Compel at 7. The court concludes that defendant Faneuff's objections are not unreasonable. Furthermore, the plaintiff does not sufficiently articulate why he needs these documents and has failed to file a memorandum in support of his motion.<sup>1</sup> He simply states that the documents are critical to establishing his failure to protect claim. The court notes, however, that the only claim against defendant Faneuff is that after he arrived at the plaintiff's cell, he did not intervene soon enough to stop the assault by Inmate Lawson. The plaintiff's complaint contains

---

<sup>1</sup> Local Rule 37(a)(3) requires that any discovery motion filed with the court be accompanied by a detailed memorandum of law containing the specific items of discovery sought or opposed. Rule 37(a)(3) provides in pertinent part:

Memoranda by both sides shall be filed with the Clerk in accordance with Rule 7(a) of these Local Rules before any discovery motion is heard by the Court. Each memorandum shall contain a concise statement of the nature of the case and a specific verbatim listing of each of the items of discovery sought or opposed, and immediately following each specification shall set forth the reason why the item should be allowed or disallowed . . . Every memorandum shall include, as exhibits, copies of the discovery requests in dispute.

no claim that Captain Faneuff had any prior knowledge of the possibility that Inmate Lawson might assault the plaintiff on November 21, 2001. Thus, it is not clear from plaintiff' motion why he needs the documents sought in his February 20, 2006 discovery request from defendant Faneuff. The motion to compel and motion for default are denied.

V. Motions for Extensions of Time, to Stay and for Summary Judgment [Docs. ## 23, 26, 27, 29]

The plaintiff seeks an extension of time to file a response to defendants' motion for summary judgment as well as a stay of any ruling on the motion for summary judgment until he completes discovery. The plaintiff asserts that he still needs to take depositions of the defendants and obtaining a copy of the grievance that he filed regarding the failure of the defendants to immediately attempt to stop the assault once they arrived at plaintiff's cell.

The plaintiff's request to stay any ruling on the motion for summary judgment until he deposes the defendants is denied in view of the court's ruling above denying the plaintiff's request to depose the defendants at the expense of the court. Due to the fact that the defendants filed their motion for summary judgment before the deadline for completing discovery expired and the court has just denied plaintiff's request to depose the defendants, the court will permit the plaintiff additional time to utilize alternative methods of discovery to obtain the information sought to be elicited through depositions of the

defendants.

The plaintiff is permitted until September 20, 2006, to serve any requests for production, interrogatories or requests for admissions on the three defendants in this action.<sup>2</sup> Counsel for the defendants will then have until October 20, 2006, to respond to the discovery requests and until October 30, 2006, to file a notice with the court indicating that the defendants have served their responses to the discovery requests on the plaintiff.

In view of these orders, the defendants' motion for summary judgment is denied without prejudice to refile after the completion of discovery by both parties. The plaintiff's motion for extension of time to respond to the motion for summary judgment is denied as moot. Any motions for summary judgment should be filed on or before December 1, 2006.

#### Conclusion

Plaintiff's Motion for Leave to Amend [**doc. # 22**] is **DENIED**.  
Plaintiff's Motion for Leave to Depose Defendants [**doc. # 25**] is

---

<sup>2</sup> The plaintiff should keep in mind that the court has denied his request for leave to amend the complaint to add new claims and new defendants. The only defendants in this action are Captain Fanueff and Officers Lopez and Wiseman. The plaintiff alleges that on November 21, 2001, these three defendants failed to timely intervene to stop the assault on him by Inmate Lawson. The plaintiff also indirectly asserts, through a reference to a grievance that he filed on December 20, 2001, No. 141-01-758, that timely thirty minute tours of his cellblock by unit staff might have prevented the assault or the injuries he suffered as a result of the assault. (See Compl. at 2, ¶ 15.) Thus, any further discovery should be addressed to these claims.

**DENIED** without prejudice. Defendants' Motion for Extension of Time [doc. # 33] to file response to plaintiff's February 20, 2006 discovery requests is **GRANTED** absent objection. Plaintiff's Motions to Compel and for Default [docs. ## 34, 35] are **DENIED**. The plaintiff's Motions for Stay [docs. ## 26, 29 ] are **DENIED**. The defendants' Motion for Summary Judgment [doc. # 23] is **DENIED** without prejudice to refile after the parties have completed discovery. The plaintiff's Motion for Extension of Time [doc. # 27] to respond to the motion for summary judgment is **DENIED** as moot.

**The plaintiff is permitted until September 20, 2006, to serve any requests for production, interrogatories or requests for admissions on the three defendants in this action. Counsel for the defendants will then have until October 20, 2006, to respond to the discovery requests and to file a notice of compliance with the court by October 30, 2006. Any motions for summary judgment should be filed on or before December 1, 2006.**

SO ORDERED in Bridgeport, Connecticut, this 18<sup>th</sup> of August, 2006.

\_\_\_\_\_/s/\_\_\_\_\_  
Warren W. Eginton  
Senior United States District Judge