

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

---

JAMES KOOS, )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. 02-1274-TV  
 )  
 CORRECTIONS CORP. OF )  
 AMERICA, et al., )  
 )  
 Defendants. )

---

ORDER DENYING PLAINTIFF'S MOTION FOR DISCOVERY

---

Before the court is plaintiff James Koos's March 15, 2004 Motion for Discovery. The motion was referred to the United States Magistrate Judge for determination. Because Koos's motion fails to comply with the Federal Rules of Civil Procedure and the Local Rules for the United States District Court for the Western District of Tennessee, the motion is denied.

Plaintiff James Koos is a federal prisoner currently incarcerated in Waupun, Wisconsin. He filed a pro se complaint pursuant to 42 U.S.C. § 1983 on November 4, 2002 against Corrections Corp. of America, et al, ("C.C.A.") alleging that C.C.A. denied him his constitutional right to vote in the 2002 elections. He seeks money damages.

Koos has filed the equivalent of a motion to compel discovery. For several reasons, the motion must be denied. Koos did not

request discovery from C.C.A. before filing his motion to compel. Koos has put the proverbial cart before the horse. A federal court will not compel a party to provide discovery until such discovery has been sought by one party and improperly denied by the other party. Federal Rule of Civil Procedure 26(a)(5) provides that discovery may be obtained by one or more of the following procedures:

depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or property under Rule 34 or 45(a)(1)(C), for inspection and other purposes; physical and mental examinations; and requests for admission.

Fed.R.Civ.P. 26(a)(5).

Koos filed his motion to compel before propounding interrogatories or requesting production or inspection of documents. It appears that Koos is only seeking production of documents in his March 15 discovery motion. Before petitioning the court to *compel* the production of these documents, Koos must first file a *request* that C.C.A. produce the documents.

Koos's motion should also be denied on procedural grounds. Koos's motion was not accompanied by the requisite certificate of counsel. Rule 7.2(a)(1)(B) of the Local Rules for the United States District Court for the Western District of Tennessee provides that discovery motions must be accompanied by a

certificate of consultation verifying that the parties have consulted and are unable to reach an accord as to the issues presented. The application of this rule to pro se litigants is clearly called for by the language of the rule itself. The rule states that "[i]f one of the disputants is an unrepresented party or witness, the consultation may be by telephone or letter." Local Rule 7.2(a)(1)(B). Noncompliance with the certificate of consultation requirement "may be deemed good grounds for denying the motion." *Id.* Accordingly, Koos's motions should be denied.

For the foregoing reasons, Plaintiff's Motion For Discovery is denied.

IT IS SO ORDERED this 2nd day of April, 2004.

---

DIANE K. VESCOVO  
UNITED STATES MAGISTRATE JUDGE