

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

SHERMAN SMALLWOOD,

Plaintiff,

vs.

Civil Action 2:08-0679
Judge Sargus
Magistrate Judge King

TERRY COLLINS, et al.,

Defendants.

OPINION AND ORDER

Plaintiff, a state prisoner who is proceeding without the assistance of counsel, has filed a civil rights action under 42 U.S.C. § 1983. Seeking declaratory and injunctive relief, plaintiff alleges that defendants' retroactive application of parole statutes, violent offender classifications and other statutory provisions creates a risk that plaintiff's punishment will be increased.

The complaint names as defendants Terry Collins, Gary Croft, Harry Hageman and Marc Dann (collectively, "defendants"), each in their official capacities. *Complaint with Jury Demand*, ¶¶ 9-12, Doc. No. 3 ("*Complaint*"). On March 17, 2009, plaintiff served Linda Janes with interrogatories and requests for admission, and ultimately filed a motion to compel responses to those requests. Doc. 28. Subsequently, plaintiff was served with responses, which plaintiff argued were insufficient because they were unsigned and stamped "Draft." Doc. Nos. 29, 30. On July 21, 2009, this Court denied the motion to compel because Linda Janes is not a party to this litigation. *Opinion and Order*, Doc. No. 32.

Buried in the answer, Doc. No. 20, however, is the assertion that Ms. Janes is the acting chief of the Ohio Adult Parole Authority, rather than Gary Croft, who was named in the complaint. *Defendants' Answer to the Complaint*, ¶ 10, Doc. No. 20. As defendants noted in their answer, it is Ms. Janes who is the proper defendant to plaintiff's claims for injunctive relief against defendant Croft in his official capacity. See Fed. R. Civ. P. 25(d). Under these circumstances, the *Opinion and Order*, Doc. No. 32, is **VACATED**.

As a party to this litigation, defendant Janes has an obligation to respond under oath to interrogatories propounded to her. Fed. R. Civ. P. 33(b)(3). Similarly, Fed. R. Civ. P. 36 requires that the written answer or objection to requests for admission be "signed by the party or its attorney." Fed. R. Civ. P. 36(a)(3). Defendant Janes has failed to respond as required to plaintiff's discovery requests. Plaintiff is entitled to final, properly executed responses to his discovery requests.

Defendant Janes is therefore **DIRECTED** to provide answers under oath to plaintiff's interrogatories and signed answers to his requests for admission within seven (7) days of the date of this *Opinion and Order*.

July 31, 2009

s/Norah McCann King
Norah McCann King
United States Magistrate Judge