

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KEVIN L. DICKENS,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 04-201-JJF
	:	
COMMISSIONER STAN TAYLOR,	:	
et al.,	:	
	:	
Defendants.	:	

MEMORANDUM ORDER

Pending before the Court is Plaintiff's Motion To (1) Enforce The Memorandum Order Dated February 20, 2009; (II) To Compel Production Of Defendants Burriss, Cunningham, Drake and Belanger For Deposition; And (III) Amend Scheduling Order (D.I. 127). By his Motion Plaintiff requests clarification of the Court's February 20, 2009 Order to the extent that there is a conflict regarding whether the Order allows Plaintiff to reschedule any previously noticed deposition, so long as he does not exceed the ten deposition limit, or whether Plaintiff is only permitted to reschedule those depositions that remained scheduled at the time of the filing of the initial Motion To Compel. Plaintiff also requests the opportunity to conduct discovery on Defendants Harvey and Stanton, who have already been deposed, concerning any actions they took to prepare for their depositions, including but not limited to, conversations they had with anyone other than their counsel and the documents that they reviewed in preparation for their depositions.

Defendants contend that the Court's Order does not require clarification and that Plaintiff is limited to deposing only those individuals who were scheduled for deposition at the time of the Court's Order. Defendants also object to any attempt to re-depose Defendants Harvey and Stanton and contend that they have responded to the inquiries defined by Plaintiff on the deposition errata sheets.

After reviewing the parties' current submissions, as well as the original submissions and the language of the Court's Order, the Court concludes that Plaintiff's interpretation of the Court's February 20, 2009 Order is correct. In its February 20, 2009 Order denying leave to exceed the ten deposition limit, the Court did not specifically address the identities of the proposed deponents. The Court intended to limit Plaintiff to ten depositions, but did not intend to limit Plaintiff's choice of deponents. The Court understands that Defendants object to the depositions of Defendants Burris, Cunningham, Drake and Belanger on the grounds that three of the four are retired from the Department of Corrections and none have been previously prepared for deposition, but the Court does not find these grounds to be sufficient to preclude Plaintiff from deposing these defendants.

With respect to Plaintiff's argument concerning the propounding of additional discovery on Defendants Harvey and Stanton, the Court notes that in his Reply Brief, Plaintiff

indicates that he does not wish to re-depose these defendants, but rather, Plaintiff seeks to propound limited written discovery on these Defendants concerning issues such as whether or not they talked to individuals other than their counsel and what those discussions were about. The Court does not find these areas of inquiry to have been adequately addressed on the deposition errata sheets offered by Defendants and the Court does not find them, on their face, to impinge on the attorney-client privilege. Accordingly, the Court will allow Plaintiff no more than fifteen (15) written interrogatories directed each to Defendant Harvey and Stanton to explore this limited line of inquiry.

To allow for the completion of these depositions and the additional written interrogatories, the Court will also amend the current Scheduling Order (D.I. 91) as set forth below. In light of the foregoing, the Court will not schedule oral argument on Plaintiff's Motion.

NOW THEREFORE, IT IS HEREBY ORDERED that:

1. Plaintiff's Motion To (1) Enforce The Memorandum Order Dated February 20, 2009; (II) To Compel Production Of Defendants Burris, Cunningham, Drake and Belanger For Deposition; And (III) Amend Scheduling Order (D.I. 127) is **GRANTED**.

2. The deadlines set forth in the Scheduling Order (D.I. 91) are amended as follows:

a. All discovery shall be completed by **July 17, 2009**.

