

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
AT CINCINNATI
CIVIL CASE NO: 11-277-SAS-JGW**

KELVIN LOVETT

PLAINTIFF

V.

OFFICER STEVEN COLE, et al.

DEFENDANTS

MEMORANDUM ORDER

Pending is pro se plaintiff's motion for production of documents. Doc. 15. In response, defendants have moved to strike the motion or, in the alternative, to be permitted thirty days in which to respond to the requests. Doc. 22. For the following reasons, the Court will not grant relief to plaintiff on the motion for production of documents. Instead, the Court will construe the motion as a request for production of documents to defendants and will grant defendants' alternative request to be afforded the thirty days set forth in Fed.R.Civ.P. 34(b)(2)(A) to respond to the requests.

Plaintiff alleges in his complaint that he was beaten by defendants, correctional officials at the Lebanon Correctional Institution. This action is in its early stages and plaintiff filed the motion for production before defendants filed their answer to plaintiff's complaint. Although styled a "motion," the "motion" is actually nine requests for production of documents by defendants. A party has thirty days to respond to a request for documents. Fed.R.Civ.P. 34(b)(2)(A).

Proper procedure requires plaintiff to submit his requests for production of documents to defendants, who have thirty days to respond. If any disputes arise regarding defendants' responses, the parties then must attempt to resolve the disputes amongst themselves before

seeking relief from the Court. LR 37.1 (“Objections, motions, applications, and requests relating to discovery shall not be filed in this Court, under any provision in Fed. R. Civ. P. 26 or 37 unless counsel have first exhausted among themselves all extrajudicial means for resolving the differences.”); LR 37.2 (“To the extent that extrajudicial means of resolution of differences have not disposed of the matter, parties seeking discovery or a protective order may then move for a protective order or a motion to compel discovery pursuant to Fed. R. Civ. P. 26(c) or 37(a). Such motion shall be accompanied by a supporting memorandum and by a certification of counsel setting forth the extrajudicial means which have been attempted to resolve differences.”).

Plaintiff thus erred by submitting his discovery requests to the Court in the form of a motion. Indeed, since the motion was not filed by the Clerk until June 17, 2011, the thirty days allotted for defendants to respond has not yet elapsed. The Court will therefore deny the motion to the extent that it seeks immediate relief from the Court.

Given plaintiff’s pro se status, however, the Court will not take the extreme action of striking the procedurally improper “motion.” Thus, the motion to strike will be denied. However, the Court will construe the motion as requests for production of documents from defendants and will grant defendants’ alternative request to be afforded the thirty days to respond set forth in Fed.R.Civ.P. 34(b)(2)(A).

For the foregoing reasons, it is **ORDERED:**

1. Plaintiff’s motion for production of documents [Doc. 15] is **denied** to the extent that it seeks immediate relief from the Court; and

2. Plaintiff’s motion for production of documents shall be construed as requests for the

production of documents to defendants; and

3. Defendants' motion to strike plaintiff's motion for production of documents [Doc. 22] is **denied in part and granted in part** as discussed previously in this memorandum order; and

4. Defendants shall respond to the construed requests for production of documents by July 18, 2011.

This the 7th day of July, 2011.

J. Gregory Wehrman
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United States Magistrate Judge