

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

EUGENE CHERRY,

Plaintiff,

v.

MATTHEW FRANK, GERALD BERGE,
PETER HUIBREGTSE, GARY BOUGHTON,
BRAD HOMPE, JOAN GERL,
SGT. C. HANEY, THOMAS BELZ and
HENRY BRAY,

Defendants.

ORDER

03-C-129-C

Plaintiff has moved for entry of default against the defendants, appointment of counsel (plaintiff's fourth such request) and in camera inspection of documents. Each of these motions will be denied.

Entry of default is appropriate where a defendant has failed to plead or otherwise defend an action. See Fed. R. Civ. P. 55(a). That is not a circumstance present here. Defendants have served an filed an answer within the 40-day deadline allowed under an agreement entered into between the Wisconsin Department of Justice and the court allowing for informal service of process on Department of Corrections employees in cases filed by

pro se prisoners.

Plaintiff's fourth motion for appointment of counsel will be denied for the reasons expressed in this court's order of June 3, 2003.

Finally, plaintiff's motion for in camera inspection of documents will be denied as premature. Plaintiff asks that the court inspect in camera

confidential inmate complaints filed in "2000, 2001 and 2003, pertaining to any inmate complaints, incidents, reports, conduct reports, administrative disciplinary reports against defendants Bray, Belz and Hompe or any documentary evidence pertaining to those three defendants written by WSPF inmates that can show application of food tampering use or excessive use of force, staff assistance strip searches all taking place on alpha unit.

In opposing the motion, defendants point out that plaintiff has not yet made a formal discovery request for the items he wants the court to inspect. Instead, it appears that plaintiff is asking the court to compel discovery he anticipates defendants will deny him on the ground that the records are confidential. A motion to compel discovery is not proper before a discovery request has been denied. If plaintiff makes a formal discovery request of defendants, he will afford the defendants an opportunity to object in whole or in part to his request and provide an explanation for any objection. In addition, he will have an opportunity to narrow or clarify his request if necessary before seeking court intervention. If plaintiff completes this process, he may find that a motion to compel is unnecessary or, at the least, have an idea what documents have been denied on the ground of confidentiality

that may be subject to in camera inspection.

ORDER

IT IS ORDERED that plaintiff's motions for entry of default against the defendants, appointment of counsel, and in camera inspection of documents are DENIED.

Entered this 18th day of June, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge