

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

LEON IRBY,

Plaintiff,

v.

ORDER

03-C-346-C

JON E. LITSCHER, Secretary, DOC;
CINDY O'DONNELL, Deputy Secretary, DOC;
JOHN RAY, Corrections Complaint Examiner (CCE), DOC;
SHARON K. ZUNKER, Director, Bureau of Health Services, DOC;
GERALD BERGE, Warden, SMCI;
TOM GONZINSKI, ICE, SMCI;
KELLY COON, ICE, Program Assistant, SMCI;
PAMELA BARTELS, Health Services Unit (HSU) Manager, SMCI,

Defendants.

Plaintiff Leon Irby has requested a second extension of time in which to oppose defendants' motions for summary judgment. It appears from his motion that plaintiff has depleted his \$200 legal loan limit for the year and cannot oppose the motions until he provides the prison's business director with a disbursement request and a "court order requiring [him] to forward specific materials to the court." This is a new procedure that was instituted on May 18, 2004. Plaintiff's request to the business office has been rejected

because it was written on legal loan paper. It is unclear whether plaintiff has now completed a disbursement request form as required and provided the business director with a copy of Magistrate Judge Stephen Crocker's April 27, 2004 order giving him until today, May 24, 2004, in which to oppose the motion. (That order would be sufficient to show the business director that this court has ordered plaintiff to respond to defendants' motions.) However, I will assume from plaintiff's request for ten additional days that he has resubmitted his request in compliance with the prison's new rules. Because plaintiff did not learn about the change in the procedure for seeking legal loan extensions in time to resubmit his request using the proper procedure, I will grant him the extension he requests.

However, plaintiff should be aware that if he is unable to obtain a legal loan extension and submit his opposition papers by June 2, 2004, I will take defendants' motions under advisement and decide them without having the benefit of plaintiff's response. I will not interfere in any decision of the business director to deny a legal loan extension. In Lindell v. McCallum, 352 F.3d 1107, 1111 (7th Cir. 2003), the Court of Appeals for the Seventh Circuit held that the district courts in Wisconsin were under no obligation to order the state of Wisconsin to lend prisoners more money or paper than they are authorized to receive under Wis. Adm. Code § DOC 309.51. In reaching this conclusion, the court of appeals stated,

The Wisconsin statute is not intended for the funding of prisoners' suits--as

explained in the Luedtke [v. Bertrand, 32 F.Supp.2d 1074, 1076 (E.D.Wis.1999)] case, the loans authorized by the statute are not "funds which are disbursed or credited to an inmate's account to be used as he wishes" but rather "simultaneous credits and debits ... for the sole purpose of enabling prisoners to purchase 'paper, photocopy work, or postage' on credit." And Lindell has "no constitutional entitlement to subsidy," Lewis v. Sullivan, 279 F.3d 526, 528 (7th Cir.2002), to prosecute a civil suit; like any other civil litigant, he must decide which of his legal actions is important enough to fund. Lucien v. DeTella, 141 F.3d 773, 774 (7th Cir.1998). If he is able to convince Wisconsin to extend him more credit for his legal endeavors, in apparent violation of Wisconsin law, any debt arising from that extension of credit will be a matter strictly between him and Wisconsin, and not any business of the federal courts.

Id.

ORDER

IT IS ORDERED that plaintiff may have an enlargement of time to June 2, 2004, in which to oppose defendants' motions for summary judgment. Defendants may have until June 16, 2004, in which to serve and file a reply. No further requests from plaintiff for an extension of the briefing schedule will be granted.

Entered this 24th day of May, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge