

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

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JOHNSON W. GREYBUFFALO #229871,

Plaintiff,

v.

DANIEL BERTRAND,

Defendant.

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ORDER

03-C-559-C

Plaintiff Johnson Greybuffalo is proceeding in this action on his claim that defendant Bertrand denied his proposal for a religious group for Native American inmates, in violation of the free exercise clause of the First Amendment and the Religious Land Use and Institutionalized Persons Act. On September 27, 2004, plaintiff submitted a letter dated September 22, 2004, which I construe as a motion for a preliminary injunction.

In his motion, petitioner alleges that on September 16, 2004, he was removed from the general population and placed in temporary lock-up for allegedly violating prison rules. On September 17, 2004, plaintiff received a conduct report charging him with disrespect, disruptive conduct and disobeying orders. Plaintiff contends that the conduct report was not prepared or signed in accordance with the Wisconsin Administrative Code and that it may

be that defendant's agents are retaliating against him for having filed this lawsuit.

Plaintiff's claim that agents of defendant may have violated state law in the manner in which they issued him a conduct report is a matter that may be raised in state court. It does not call into question plaintiff's rights under federal law or the United States Constitution. Furthermore, plaintiff's claim that he may have been subjected to retaliation in response to his having exercised his First Amendment right to file a lawsuit is not properly raised in the context of this lawsuit.

In situations where a plaintiff alleges that the defendant or agents of the defendant have retaliated against him for initiating a lawsuit, it is the policy of this court to require the claim to be presented in a lawsuit separate from the one which is alleged to have provoked the retaliation. This is to avoid the complication of issues that can result from an accumulation of claims in one action.

The court recognizes an exception to this policy only where it appears that the alleged retaliation would directly, physically impair the plaintiff's ability to prosecute his lawsuit. In this case, plaintiff has not made such a showing. Defendant Bertrand moved for summary judgment on August 20, 2004. On September 27, 2004, plaintiff filed a response to defendant's proposed findings of fact, a brief and evidentiary materials. Plaintiff's submissions comply with this court's summary judgment procedures. Once defendant files his reply to plaintiff's opposing materials, the motion will be taken under advisement. There

is nothing else for plaintiff to do at this point except await the outcome of the motion for summary judgment.

Because it appears clear that plaintiff has not been prevented physically from defending against the motion for summary judgment or prosecuting this action, he has failed to make the kind of showing necessary to entitle him to a preliminary injunction in the context of this lawsuit.

ORDER

IT IS ORDERED that plaintiff's motion for a preliminary injunction is DENIED.

Entered this 4th day of October, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge