

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

JONATHAN P. COLE,

Plaintiff,

v.

JON E. LITSCHER;
MICHAEL CATALANO;
PRISON HEALTH SERVICES, INC.;
PAM BARTELS;
JOHN W. KUSSMAUL; D. ESSER;
FUERSTENBURG; JANTZEN;
TIM F. HAINES; SHIRLEY OLSON;
KERRY MELBY; BECKY MANNING;
and GERALD A. BERGE,

Defendants.

ORDER

04-C-116-C

In a document titled "Motion for Court Order" dated August 8, 2004, plaintiff Cole sought a court order directing him to file an appeal of Judge Crocker's order of July 30, 2004 granting defendants' motion for a protective order, a reply to defendants' response to his motion to compel discovery dated August 4, 2004, and a response to the partial motion to dismiss filed by defendants Litscher, Kussmaul, Esser, Jantzen, Fuerstenberg, Berge and Haines. It appeared to be plaintiff's view that if he could obtain such an order from the

court, he could convince prison officials that extraordinary circumstances existed warranting an extension of his legal loan privileges beyond the limits established in Wis. Admin. Code § DOC 309.51. I denied this motion in an order entered on August 19, 2004, concluding that the question whether plaintiff can or cannot convince prison officials to find extraordinary circumstances warranting an extension of the statutory legal loan limit is not a matter in which this court will interfere. Now plaintiff has filed a “Motion to Extend Time to File Plaintiff’s Responses.” In addition, he requests an order directing respondents to put him on a priority list for access to the legal computer and starter kit to do legal research.

The court has not set deadlines for plaintiff to file an appeal of Judge Crocker’s July 30 order and it has not requested that plaintiff reply to defendants’ response to his motion to compel discovery. Therefore, plaintiff’s motion for an extension of time in which to submit such documents will be denied.

Although it does not appear in the court’s record that a separate letter was sent to the parties establishing a schedule for briefing defendants’ motion to dismiss certain of plaintiff’s claims for his failure to exhaust his administrative remedies, the magistrate judge’s June 17, 2004 preliminary pretrial conference order advised the parties that if a motion to dismiss were to be filed, the plaintiff would have 21 calendar days from the date the motion was filed with the court in which to serve and file a response. Defendants filed their motion to dismiss with the court on August 9, 2004. Therefore, plaintiff’s response is due on

August 30, 2004.

Plaintiff does not explain why he cannot oppose defendants' motion to dismiss before August 30. Perhaps he is relying on his argument in support of his request for an order directing respondents to put him on a priority list to allow him access to a legal computer and starter kit to do legal research to support his request for an enlargement of time within which to oppose defendants' motion to dismiss. If he is, I can think of no reason why plaintiff's lack of priority access to a computer, a "starter kit," or any increased time in the law library would prevent him from challenging defendants' motion to dismiss. Defendants have made it clear in their brief in support of the motion to dismiss precisely which of plaintiff's claims have not been the subject of inmate complaints, according to the Department of Corrections's administrative records. The law in the Seventh Circuit governing administrative exhaustion under 42 U.S.C. § 1997e is clear. If the factual record reveals that plaintiff did not file inmate complaints and pursue the course of administrative appeals required by the Department of Corrections with respect to any claim, plaintiff's complaint will have to be dismissed as to that claim. Therefore, plaintiff should be focusing on the factual record and not on legal argument in opposition to the motion to dismiss. If plaintiff has documentary evidence to show that he fully exhausted his administrative remedies as to any of the claims that defendants contend he failed to exhaust, he should submit those records to the court. That is the only way he can successfully defeat defendants' motion.

Because plaintiff has made no showing of a need for an enlargement of time in which to oppose defendants' motion to dismiss or for an order directing that he be allowed priority access to a legal computer or starter kit or law library, these motions will be denied.

ORDER

IT IS ORDERED that plaintiff's motions "to Extend Time to File Plaintiff's Responses" and for an order directing respondents to put him on a priority list for access to the legal computer and starter kit to do legal research are DENIED.

Entered this 27th day of August, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge