

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

KEIFVIN MALONE,

Plaintiff,

v.

JOHN CLARK,

Defendant.

ORDER

04-C-229-C

On May 25, 2004, I granted plaintiff leave to proceed on his claim that in November 2003, defendant John Clark violated his rights under the First Amendment by issuing him a conduct report in retaliation for his having complained about the actions of another prison official. On July 27, 2004, after plaintiff advised the court that he was without the funds to serve his complaint on the defendant, I granted plaintiff leave to proceed in forma pauperis for the purpose of serving his complaint. On September 2, 2004, defendant Clark filed an answer to the complaint and moved to dismiss the action on the ground that plaintiff had failed to exhaust his administrative remedies before filing his suit as 42 U.S.C. § 1997e requires. A briefing schedule has been established on the motion and it should be ready for decision on or about October 4, 2004. However, two additional matters need to

be addressed.

On September 2, 2004, defendant filed a document titled “Defendant John Clark’s Motion for a Scheduling Order as Set Forth in Rule 16(b), Fed. R. Civ. P., and to Stay Discovery until after the Court has Decided the Defendant’s Motion to Dismiss.” These motions are presently before the court.

As for the motion for a scheduling order, the motion will be denied as unnecessary. On September 8, 2004, the court scheduled a preliminary pretrial conference to be held before Magistrate Judge Stephen Crocker on November 2, 2004. If the case survives defendant’s motion to dismiss, the schedule described in Fed. R. Civ. P. 16(b) will be established.

Defendant’s motion to stay discovery pending a decision on the motion to dismiss will be granted. It is the court’s intention to decide the motion in advance of November 2, 2004, so that the preliminary pretrial conference can be cancelled if it is not necessary. Because the court intends to act quickly on defendant’s motion after it is ripe for review, neither party will be prejudiced by a temporary stay of discovery.

ORDER

IT IS ORDERED that

1. Defendant’s motion for a scheduling order is DENIED as unnecessary at this time.

2. Defendant's motion to stay discovery pending a decision on the motion to dismiss is GRANTED.

3. Discovery is STAYED in this action pending resolution of defendant's motion to dismiss.

Entered this 13th day of September, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge