

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

TITUS HENDERSON,

Plaintiff,

v.

ORDER

04-C-39-C

VICKI SEBASTIAN, GERALD BERGE,
MATTHEW FRANK, CATHERINE BROADBENT,

Defendants.

In his brief in opposition to defendants' motion to dismiss for plaintiff's failure to exhaust administrative remedies, plaintiff asked for oral argument and for conversion of defendants' motion into a motion for summary judgment. Both requests will be denied.

Plaintiff suggests that he cannot adequately present in writing his argument in opposition to defendants' motion to dismiss. However, his submission in opposition to defendants' motion is lengthy, it clearly explains his position on the merits of the motion and it is accompanied by additional documentation of his efforts to exhaust. I am not persuaded that oral argument would be helpful to assist the court in deciding the motion.

Plaintiff argues that defendants' motion to dismiss should be converted to a motion for summary judgment because defendants have submitted the affidavit of John Ray in

support of the motion. In his affidavit, Ray establishes that he is an inmate complaint examiner with authority to review records maintained in the Wisconsin Department of Corrections Inmate Complaint Tracking System. The purpose of his affidavit is to authenticate public records from the inmate complaint tracking system that defendants rely upon in arguing that plaintiff has failed to exhaust his administrative remedies. Because documentation of a prisoner's use of the inmate complaint review system is a matter of public record, a court may take judicial notice of the documents without converting the motion to dismiss into a motion for summary judgment. Menominee Indian Tribe of Wisconsin v. Thompson, 161 F.3d 449, 455 (7th Cir. 1998) (citing General Electric Capital Corp. v. Lease Resolution Corp., 128 F.3d 1074, 1080-81 (7th Cir. 1997)). Therefore, plaintiff's motion to convert defendants' motion to dismiss into a motion for summary judgment will be denied.

ORDER

IT IS ORDERED that plaintiff's requests for oral argument and for conversion of

defendants' motion to dismiss into a motion for summary judgment are DENIED.

Entered this 12th day of July, 2004.

BY THE COURT:
BARBARA B. CRABB
District Judge