IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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GEORGE J. LAZARIS,

ORDER

Plaintiff,

04-C-844-C

v.

FERN SPRINGS, DR. ANKARLO,
DR. LARSON, MATTHEW FRANK,
JILL KNAPP, LIZ HEARTMAN,
CPT. TEGEL and JANE DOE,

Defendants.

- -

In an order entered in this case on January 31, 2005, I asked plaintiff to supplement his complaint with the following information:

1. Identification of the grievance or grievances he filed that allegedly caused defendant Fern Springs to retaliate against him; and

2. What relief he seeks from this court for the wrongdoings alleged in his complaint.

I told plaintiff that if he failed to supplement his complaint with a request for relief as required by Fed. R. Civ. P. 8(a) by February 14, 2005, I would dismiss his case without prejudice to his refiling the action at some later time.

In a subsequent order dated February 24, 2005, I granted plaintiff an enlargement of time to March 7, 2005, in which to provide the court with this additional information because plaintiff's mother had written a letter to the court indicating that plaintiff had told her that prison officials were preventing him from sending mail. In the March 7 order, I noted my skepticism that trained prison officials would engage in such conduct and speculated that plaintiff's failure to follow mailing regulations was likely the cause of the problem. Nonetheless, I asked Assistant Attorney General Corey Finklemeyer to investigate the matter and report his findings to the court. His report, which indicates that plaintiff had attempted to send letters to the court without an appropriate return address shortly before I issued the January 31 order, corroborates my suspicion that plaintiff's failure to follow mail rules was the likely reason why he was unable to respond to the order in a timely fashion. Whatever the problem may have been, it appears to have been resolved. I have received from plaintiff multiple supplements to his complaint as well as motions for appointment of counsel and for a preliminary injunction. I will address each in turn.

A. Complaint Supplement

1. Prayer for relief

In his supplement, plaintiff makes a formal request for monetary, declaratory and injunctive relief. This supplement satisfies Fed. R. Civ. P. 8(a)'s prayer for relief requirement

and will be appended to plaintiff's original complaint. Now that plaintiff has submitted an appropriate prayer for relief, I will grant him leave to proceed on his claim that defendants Springs and Larson violated his Eighth Amendment rights by denying him medical treatment for heart disease and surgery for his ankle and his Eighth Amendment claim that defendants Ankarlo and Matthew Frank denied him mental health care.

2. Retaliation claim

However, plaintiff's supplement does not include any information identifying the inmate grievance or grievances that he believes caused defendant Springs to retaliate against him. Instead, plaintiff wrote the court a letter indicating that he will send the court the requested information related to his retaliation claims as soon as he receives a money order from his mother. There is no reason why plaintiff should need additional time or money to provide the court with the basic information requested of him, namely any information that would enable the court and defendants to identify the constitutionally protected activity on which his retaliation claim is based. As I indicated to plaintiff in the January 31 order, this information could include the dates on which his inmate complaints were filed, complaint identification numbers or a description of their contents. A sheet of paper, a writing implement and postage are the only resources plaintiff should have needed to provide this information; plaintiff's letter confirms that all three were available to him. I will not grant

plaintiff a third extension of time to provide information which rightfully should have been placed in his original complaint. Plaintiff's inability to articulate his theory of liability several months after filing his complaint leaves me little choice but to deny him leave to proceed against defendant Spring on a First Amendment retaliation theory.

3. New claims: Americans with Disabilities Act

In addition to the supplement plaintiff submitted in response to my earlier order, plaintiff has filed an addendum to his original complaint, alleging new claims purportedly arising under the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213 and adding parties who had been dismissed in the January 31 order. Because plaintiff is a prisoner, he may not proceed with these new claims unless the court grants him permission to do so after reviewing his complaint to insure that it states a claim upon which relief can be granted and is not legally frivolous or malicious. 28 U.S.C. § 1915A. In the addendum to his complaint, plaintiff alleges the following facts.

a. Allegations of fact

Plaintiff George John Lazaris is confined at the Columbia Correctional Institution in Portage, Wisconsin, pursuant to parole revocation. Defendant Jill Knapp is a parole officer and her supervisor is defendant Liz Heartman. Previously, plaintiff had been incarcerated

at the Jackson Correctional Institution in Black River Falls, Wisconsin. At the Jackson facility, defendant Fern Springs is a doctor, defendant Jane Doe is her supervisor and defendant Tegel is a captain.

On August 1, 2000, while on parole, plaintiff drank alcohol and used cocaine. A parole officer learned of this violation and offered him the opportunity to participate in alternative programming to avoid having his parole revoked. On September 16, 2001, after agreeing to participate in the program, plaintiff had unanticipated, emergency surgery on his ankle. After the surgery, plaintiff used a leg brace and crutches. In order to allow his ankle an opportunity to heal, plaintiff stopped going to the alternative program. Because he stopped attending the program, plaintiff was threatened with parole revocation. The threat of returning to prison caused plaintiff to suffer immense stress. Plaintiff asked defendants Knapp and Heartman for permission to attend the program at a different location but his request was denied.

In January 2002, plaintiff underwent a second surgery on his ankle. Again, he was instructed by his doctor to refrain from placing weight on his ankle to allow it to heal. Plaintiff told defendants Knapp and Heartman about the surgery and renewed his request to attend the revocation alternative programing at a different location. In addition, he told both that if they refused his request he would sue them. Defendant Heartman told plaintiff that his transportation problems were not her concern.

In June 2002, under threat of parole revocation, plaintiff resumed attending the program. In order to attend, plaintiff took 6 buses and walked 6 blocks each day, presumably 3 buses and 3 blocks each way. After 5 weeks, plaintiff's doctor wrote defendant Knapp a note "forbidding" plaintiff from attending the program at its current location and requesting that plaintiff be permitted to attend the program at a location six blocks from his apartment.

At some later point, a parole revocation hearing was scheduled. During the hearing, defendant Knapp made telephone calls to medical professionals to "paint a bad picture of plaintiff" in front of the Administrative Law Judge. Plaintiff's parole was revoked and he was returned to prison.

After his parole was revoked, plaintiff was placed at the Jackson Correctional Institution. On October 25, 2002, he was rushed to the University of Wisconsin Hospital; some of the hardware that had been placed in his ankle during one of his surgeries shifted, causing a screw to protrude approximately 2½ inches from his skin. Defendant Fern Springs intentionally delayed getting plaintiff a new leg brace for several months while telling plaintiff that she was waiting for new straps; she gave defendant Tegel permission to take plaintiff's leg brace, crutches and wheel chair while he was in segregated confinement; and she denied plaintiff's requests for assistance cleaning his room and getting his food tray, to use a shower chair and to have someone to push him to his medical appointments. Both

defendant Springs and defendant Doe denied plaintiff's requests to be transported to medical appointments in a wheelchair and wheelchair accessible van. Disabled inmates at the Jackson facility are often provided with assistance cleaning their cells, retrieving their food trays and going to medical appointments. Because plaintiff was not provided with this assistance, he was forced to stand on his bad leg and eventually fractured his ankle.

b. Americans with Disabilities Act

The purpose of the Americans with Disabilities Act is "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). To that end, it prohibits discrimination against the disabled in the areas of employment (Title I); public services, programs and activities (Title II) and public accommodations (Title III). Tennessee v. Lane, 124 S. Ct. 1978, 1984 (2004). Plaintiff's allegations invoke Title II, which provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity or be subjected to discrimination by such entity." 42 U.S.C. § 12132. The United States Supreme Court has held that Title II extends to state prison inmates. Pennsylvania Dept. of Corrections v. Yeskey, 524 U.S. 206 (1998). In order to make out a claim under Title II, a plaintiff must allege facts suggesting that he is a qualified individual with a disability and was excluded

from benefits or services of a public entity or discriminated against by such entity because of his disability. 42 U.S.C. § 12132; Miller v. King, 384 F.3d 1248, 1265 (11th Cir. 2004); Jones v. City of Monroe, 341 F.3d 474, 477 (6th Cir. 2003); Gohier v. Enright, 186 F.3d 1216, 1219 (10th Cir. 1999).

1. Qualified individual with a disability

A person meets the definition of an individual with a disability if he or she (a) has a physical or mental impairment that substantially limits one or more major life activities; (b) has a record of such an impairment; or (c) is regarded as having such an impairment. 42 U.S.C. § 12102(2)(A)-(C). Walking is a major life activity. 45 C.F.R. § 84.3(j)(2)(ii); Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184, 195-97 (2002); Miller, 384 F.3d at 1266. "Substantially limits" means "[u]nable to perform a major life activity that the average person in the general population can perform; or [s]ignificantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity." 29 C.F.R. § 1630.2(j). In determining whether an individual is substantially limited in a major life activity, a court must consider: "[t]he nature and severity of the impairment; [t]he duration or expected duration of the impairment; and [t]he permanent

or long-term impact, or the expected permanent or long-term impact of or resulting from the impairment." 29 C.F.R. § 1630.2(j)(2)(i)-(iii). "Merely having an impairment does not make one disabled for purposes of the ADA." Toyota, 534 U.S. at 195.

"[A]n individual whose legs are paralyzed" or who "can only walk for very brief periods of time" is substantially limited in the major life activity of walking. 29 C.F.R. Pt. 1630, App. § 1630.2(j); Miller, 384 F.3d at 1266. Plaintiff's allegations include some indication that the impairment to his ability to walk was not "substantial" at all times; in particular, his allegations suggest that prison health officials, who order that disabled inmates be provided with various forms of assistance routinely, determined that plaintiff was not eligible for such assistance. Nonetheless, plaintiff alleged that his doctor had advised him to refrain from placing weight on one of his legs and had given him a leg brace, crutches and a wheel chair and that when he did place pressure on that leg, he fractured his ankle. At this early stage in litigation, plaintiff's allegations are sufficient to raise a claim that he suffered from a substantial impairment to his ability to walk. However, plaintiff should be aware that it will be his burden to prove this substantial impairment. In addition, he will be responsible for proving that he was qualified for the benefits and services he sought; several of plaintiff's claims are directed not at denials of services provided to the general inmate population by reason of his disability but at denials of benefits provided routinely but exclusively to disabled inmates because plaintiff was apparently determined to be not in need of such

services.

2. Exclusion from benefits or services because of disability

From plaintiff's allegations, I understand him to allege he was prevented from taking advantage of the following benefits or services because of his disability: (1) the parole revocation alternative program; (2) showers; (3) meals; and (4) medical treatment. Each of these qualifies as a "service, program or activity" within the meaning of § 12132. Crawford v. Indiana Dept. of Corrections, 115 F.3d 481 (7th Cir. 1997) (use of dining hall as an "activity"; education program as a "program"), abrogated on other grounds in Erickson v. Bd. of Governors of State Colleges and Universities for Northeastern Illinois University, 207 F.3d 945 (7th Cir. 2000)); Owens v. Chester County, 2000 WL 116069 (E.D. Pa. 2000) (medical services/crutches); Schmidt v. Odell, 64 F. Supp. 2d 1014, 1032 (D. Kan. 1999) (shower facility, meals); Rouse v. Plantier, 997 F. Supp. 575 (D. N.J. 1998) (medical treatment), vacated on other grounds, 182 F.3d 192 (3d Cir. 1999); Kaufman v. Carter, 952 F. Supp. 520 (W.D. Mich. 1996) (shower facility); Garrett v. Angelone, 940 F. Supp. 933 (W.D. Va. 1996) (rehabilitation programing).

Technically speaking, plaintiff has not alleged that he was entirely unable to take advantage of these services because of his disability; instead, he alleges that he was able to do so only by placing undue weight on his injured ankle, causing it to fracture. However,

"the fact that [a prisoner] was actually able to use most of the jail services does not preclude his claim [if] he was able to do so only be virtue of exceptional and painful exertion . . . ." Schmidt, 64 F. Supp. 2d at 1033; see also 28 C.F.R. § 35.150 (public entity must make services, programs and activities "readily accessible"); Chaffin v. Kansas State Fair Bd., 348 F.3d 850 (10th Cir. 2003); Shotz v. Cates, 256 F.3d 1077, 1080 (11th Cir. 2001) (violation of ADA can occur even where plaintiff is not "completely prevented from enjoying a service, program or activity"); Shedlock v. Dept. of Corrections, 442 Mass. 844, 855, 818 N.E.2d 1022, 1033 (2004). Thus, plaintiff's allegations are sufficient to show "exclusion" from these services.

However, with respect to his claim that he was excluded from the parole revocation program, plaintiff does not suggest that the difficulty he experienced attending the program was caused by his alleged disability. The location of his home and city bus routes forced him to take three buses and travel three blocks each way, not his injury. Plaintiff does not suggest that the buses were not handicap accessible and I cannot conclude that walking three blocks on crutches once in the morning and once in the evening is such an "exceptional and painful exertion" that the program was effectively unavailable to plaintiff; the fact that plaintiff made this commute for five consecutive weeks is testimony to its feasability. Finally, plaintiff does not suggest that transportation was provided to any other program participant. In short, plaintiff's allegations do not suggest that he was "excluded from

participation in or [] denied the benefits of" this program and thus I cannot allow him to proceed on his Americans with Disabilities Act claim against defendants Knapp and Heartman. However, because plaintiff's allegations are sufficient to suggest that he is a qualified individual with a disability and that defendants Springs, Tegel and Doe denied him medical care, namely a leg brace, crutches and a wheelchair, and that defendant Springs prevented him from receiving meals and taking showers, I will allow him to proceed on these Title II claims.

3. Abrogation

Although I am granting plaintiff leave to proceed on his claims under the Americans with Disabilities Act, there is a substantial and open question whether defendants are entitled to sovereign immunity under the Eleventh Amendment. Generally, the Eleventh Amendment grants states immunity from suits for monetary damages brought by private citizens. In order to abrogate this immunity, Congress must have (1) "unequivocally expressed its intent to abrogate" in the statute at issue; and (2) "acted pursuant to a valid grant of constitutional authority." Kimel v. Florida Bd. of Regents, 528 U.S. 62, 73 (2000). The ADA provides that "[a] State shall not be immune under the [E]leventh [A]mendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this chapter." 42 U.S.C. § 12202. This easily

satisfies the unequivocal expression requirement. Lane, 124 S. Ct. at 1985. Thus, the question becomes whether Congress acted pursuant to a valid exercise of power. After Seminole Tribe v. Florida, 517 U.S. 44, 70-72 (1996), in which the Court held that Congress could not abrogate Eleventh Amendment immunity through its Article I powers, the more precise question is whether abrogation was valid exercise of its remedial powers under § 5 of the Fourteenth Amendment.

In determining whether Congress has acted within its § 5 power to abrogate Eleventh Amendment immunity, courts must apply a three part test laid out in City of Boerne v. Flores, 521 U.S. 507 (1997). A court must (1) identify the scope of the constitutional right at issue; (2) determine whether Congress identified a history and pattern of unconstitutional conduct by the states; and (3) analyze whether the statute is an appropriate, congruent and proportional response to the history and pattern of unconstitutional treatment. Id. at 520. In University of Alabama Bd. of Trustees v. Garrett, 531 U.S. 356 (2001), the Supreme Court applied this test to Title I of the Americans with Disabilities Act, which deals with discrimination in the employment context, and concluded that Congress had not validly abrogated Eleventh Amendment immunity under that section of the Act. The Court noted the absence of Congressional findings revealing past pattern of unconstitutional employment discrimination by the states. Id. at 368, 374. Thus, it concluded that Title I flunked the second prong of the Boerne analysis. However, the Court left open the question whether

Congress had validly abrogated state sovereign immunity under Title II of the Act.

In Tennessee v. Lane, 124 S. Ct. 1978 (2004), the Supreme Court took up this question and provided a partial answer. In that case, the Court "adopted an 'as applied' test, stating that 'nothing in our case law requires us to consider Title II, with its wide variety of applications, as an undifferentiated whole.'" Miller v. King, 384 F. 3d 1248, 1271 (11th Cir. 2004) (quoting Lane, 124 S. Ct. at 1992). Lane involved two disabled persons who alleged that they had been denied access to a court lacking an elevator. The Court found that there were ample congressional findings of past instances of states denying disabled citizens access to public services and that the Americans with Disabilities Act's "reasonable modification" requirement was congruent and proportional with the States' obligation to protect citizens' right to access the courts. Id. at 1993. Thus, the Court concluded that Congress had the power under § 5 of the Fourteenth Amendment to enact at least that portion of Title II that applies to the class of cases implicating the fundamental right of access to the courts. Id. at 1994. However, the Court limited its holding to this class of cases expressly and indicated that individual analysis would be necessary for future Title II cases with different scenarios.

Plaintiff's ADA claims do not implicate his right to access the courts, but instead implicate his rights under the Eighth Amendment and Equal Protection clause. Two circuits have addressed the abrogation question in the wake of Lane as it pertains to prisoners' ADA claims. Both found Boerne's third prong, congruence and proportionality, to be lacking

although for slightly different reasons. Miller, 384 F.3d at 1274; Cochran v. Pinchak, — F.3d —, 2005 WL 589434 (3d Cir. 2005). In Miller, the Court of Appeals for the Eleventh Circuit found that the only constitutional right implicated by the inmate plaintiff's ADA claim was his Eighth Amendment right to be free from cruel and unusual punishment. Id. at 1272. In comparing the case to Lane, the court noted that the "robust, positive due-process obligation of the States to provide meaningful access is in stark contrast with the States' negative obligation to abstain from 'cruel and unusual punishment,' a markedly narrow restriction on prison administrative conduct." Id. at 1274. After noting that the Eighth Amendment has little to no effect on the provision of most prison services, programs and activities, the court concluded that the extensive remedies provided in the ADA were vastly disproportionate to the limited scope of actions prohibited under the Eighth Amendment. Id. Thus, the court held that "Title II of the ADA, as applied in this prison case, does not validly abrogate the States' sovereign immunity . . . ." Id. at 1275.

In Cochran, the Court of Appeals for the Third Circuit found that an inmate-plaintiff's ADA claim implicated his rights under the Fourteenth Amendment's Equal Protection Clause. When the court reached the third prong of the Boerne analysis, it juxtaposed the obligations placed on prisons by the ADA with states' obligations under the equal protection clause. Id. at *6. Noting that a disability is not a suspect classification and therefore subject to a "rational relationship" standard of review, the court reasoned that

"Title II's obligation to include 'disabled' prisoners in all services, programs or activities' conflicts with the States' right to impose classifications on disabled prisoners as long as these classifications pass muster under the Equal Protection Clause." Id. at *8. The court emphasized that this is particularly true in the prison context in light of the wide latitude afforded to prison officials to create prison policies. Id. (citing Turner v. Safley, 482 U.S. 78 (1987)).

Although I find the reasoning in both Miller and Cochran to be quite persuasive, I will refrain from making a final determination whether plaintiff's claims are barred by the Eleventh Amendment at this time. First, the question of Title II abrogation in the prison context is already the subject of briefing in another case before this court. See Flakes v. Frank, 04-C-189-C (W.D. Wis.). The resolution of the issue in Flakes may be decisive of the issue in this case. More important, notwithstanding this court's earlier admonition to plaintiff regarding his failure to include a prayer for relief in his original complaint, plaintiff's newest supplement gives no indication what sort of redress he is seeking for his ADA claims. Although I will construe plaintiff's submissions liberally and treat his prayer for relief supplement as applying to his Title II claims, the disjointed nature of plaintiff's complaint leaves some doubt whether plaintiff intends to seek monetary damages under the ADA. If plaintiff seeks only prospective injunctive relief, his claims would fall under the exception to sovereign immunity carved out in Ex parte Young, 209 U.S. 123 (1908), making

determination of the abrogation question unnecessary. See Marie O. v. Edgar, 131 F.3d 610, 614 (7th Cir. 1997) ("suits against state officials seeking prospective equitable relief for ongoing violations of federal law are not barred by the Eleventh Amendment under the Ex parte Young doctrine").

B. Motion for Appointment of Counsel

This is plaintiff's second motion for appointment of counsel in this case. As I informed plaintiff in denying his first motion as premature, he is required to submit a list of the names and addresses of at least three lawyers who declined to represent him before the court will find that he made reasonable efforts to secure counsel on his own. Plaintiff's renewed motion indicates that he has sent representation request letters to three lawyers but his attached letter to the court makes clear that he has not yet received any responses. Again, I must deny plaintiff's renewed motion as premature. Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). If plaintiff chooses to renew his motion at some later point, he should submit documentation showing that his efforts to retain counsel have been unsuccessful.

C. Motion for Preliminary Injunction

The standard applied to determine whether plaintiff is entitled to preliminary

injunctive relief is well established.

> A district court must consider four factors in deciding whether a preliminary injunction should be granted. These factors are: 1) whether the plaintiff has a reasonable likelihood of success on the merits; 2) whether the plaintiff will have an adequate remedy at law or will be irreparably harmed if the injunction does not issue; 3) whether the threatened injury to the plaintiff outweighs the threatened harm an injunction may inflict on defendant; and 4) whether the granting of a preliminary injunction will disserve the public interest.

Pelfresne v. Village of Williams Bay, 865 F.2d 877, 883 (7th Cir. 1989). At the threshold, a plaintiff must show some likelihood of success on the merits and that irreparable harm will result if the requested relief is denied. If plaintiff makes both showings, the court then balances the relative harms and public interest, considering all four factors under a "sliding scale" approach. See In re Forty-Eight Insulations, Inc., 115 F.3d 1294, 1300 (7th Cir. 1997).

To obtain a preliminary injunction, a moving party must meet an exacting standard. See Abbott Labs. v. Mead Johnson & Co., 971 F.2d 6, 11 (7th Cir. 1992). This court requires that a party seeking emergency injunctive relief follow specific procedures for obtaining such relief. Those procedures are described in a document titled Procedure To Be Followed On Motions For Injunctive Relief, a copy of which is included with this order. Plaintiff should pay particular attention to those parts of the procedure that require him to submit proposed findings of fact in support of his motion and point to admissible evidence in the record to support each factual proposition. Plaintiff has not provided any evidence

or proposed findings of fact showing that he is likely to succeed on his claims or that he will suffer irreparable harm if an injunction is not granted. Because he has not followed the procedures for preliminary injunctive relief and has not made the necessary showing that he is entitled to such relief, I will deny his motion without prejudice to his renewing it with proposed findings of fact and evidentiary support.

ORDER

IT IS ORDERED that

1. Plaintiff George J. Lazaris is GRANTED leave to proceed on his claims that

a. Defendants Fern Springs and Larson violated his Eighth Amendment rights by denying him medical treatment for heart disease and surgery for his ankle;

b. Defendants Ankarlo and Matthew Frank denied him mental health care in violation of the Eighth Amendment;

c. Defendants Springs, Tegel and Doe denied him medical care, namely a leg brace, crutches and a wheelchair, in violation of the Americans with Disabilities Act; and

d. Defendant Springs prevented him from receiving meals and taking showers in violation of the Americans with Disabilities Act.

2. Plaintiff is DENIED leave to proceed pursuant to 28 U.S.C. § 1915A(b)(2) for his failure to state a claim upon which relief may be granted on his claims that defendant

Springs retaliated against him in violation of the First Amendment and that defendants Jill Knapp and Liz Heartman excluded him from a parole revocation alternative program in violation of the Americans with Disabilities Act.

3. Defendants Knapp and Heartman are DISMISSED from this case.

4. Plaintiff's renewed motion for appointment of counsel is DENIED without prejudice to his renewing it at some later point;

5. Plaintiff's motion for preliminary injunction is DENIED without prejudice to his renewing it with the appropriate evidentiary submissions;

6. Plaintiff is responsible for serving his complaint upon the defendants. A memorandum describing the procedure to be followed in serving a complaint on individuals in a federal lawsuit is attached to this order, along with 6 copies of plaintiff's complaint and blank waiver of service of summons forms.

7. For the remainder of this lawsuit, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer that will be representing the defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that plaintiff has sent a copy to defendant or to defendant's attorney.

8. Plaintiff should keep a copy of all documents for his own files. If he is unable to

use a photocopy machine, he may send out identical handwritten or typed copies of his documents.

Entered this 25th day of March, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge