

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

STEVEN D. STEWART,

Plaintiff,

v.

C.O. BARR, C.O. MCDANIELS, C.O. STOWELL,
BURTON COX, JR., CINDY SAWINSKI
and C.O. GOVIER (Male),

Defendants.

ORDER

05-C-293-C

Plaintiff Steven Stewart is proceeding in this case on three claims: 1) defendants Govier, Stowell and McDaniels violated his First Amendment rights when they refused to allow plaintiff to be transported outside the prison unless he removed his braids and combed out his dreadlocks; 2) defendants Cox and Sawinski violated plaintiff's Eighth Amendment right to medical care for his serious medical needs; and 3) defendant Barr violated plaintiff's Eighth Amendment rights when he refused to allow plaintiff to take prescribed medication for three days.

In a preliminary pretrial conference order dated September 20, 2006, United States Magistrate Judge Stephen Crocker set February 17, 2006, as the deadline for filing

dispositive motions. Defendants beat that deadline, filing a motion for summary judgment on January 6, 2006. On January 12, 2006, the clerk of court issued a briefing schedule on defendants' motion, which provides that plaintiff is to file and serve proposed findings of fact, evidentiary materials and a brief no later than February 6, 2006. Now plaintiff has filed two motions. In the first, he asks for a one-week extension of the February 6 deadline to oppose defendants' motion. That request will be granted. Because defendants' motion was filed substantially before the deadline set by the court, a one-week extension of the date plaintiff's opposition papers are due will not unduly disrupt the progress of this case.

Plaintiff's second motion is a "motion for temporary restraining order and/or preliminary injunction." In this motion, plaintiff seeks an order directing prison officials to transfer him from the Wisconsin Secure Program Facility to another penal institution because plaintiff believes that he has become the object of harassment in retaliation for his having filed this lawsuit.

Plaintiff's claim of retaliation cannot be brought in the context of this lawsuit. In situations in which a plaintiff alleges that state officials 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 that is alleged to have provoked the retaliation. This is to avoid the complication of issues which 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 does not suggest that any of the retaliatory acts about which he complains will prevent him from preparing his response to defendants' motion for summary judgment or obtaining evidence to prove his claims. If petitioner files a new lawsuit raising his claim of retaliation, he is free to move for a preliminary injunction in the context of that lawsuit.

ORDER

IT IS ORDERED that

1. Plaintiff's motion for an extension of time to February 13, 2006, in which to file a response to defendants' proposed findings of fact, evidentiary materials and a brief in opposition to defendants' motion for summary judgment is GRANTED. Defendants may have until February 23, 2006, in which to serve and file their reply.

2. Plaintiff's motion for a temporary restraining order or preliminary injunction is
DENIED.

Entered this 30th day of January, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge