

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

NATHANIEL ALLEN LINDELL,

Plaintiff,

v.

CINDY O'DONNELL, RICK RAEMISCH,
SANDRA HAUTAMAKI, JOHN RAY,
STEVEN CASPERSON, JEFF HAEN,
STEVEN SPANBAUER, KATHLEEN BELLAIRE,
CAPT. KURT LINJER, C.O. DEAVER, ELLEN RAY,
CAPT. GILBERG, PETER HUIBREGTSE, GERALD
BERGE, RICHARD SCHNEITER,
SGT. S. GRONDIN, BRIAN KOOL, C.O. D. ESSER,
C.O. A. JONES, GARY BOUGHTON, JOHN SHARPE,
KELLY TRUMM, C.O. JOHNSON, TIMOTHY HAINES,
LT. J. GRONDIN, C.O. BELL, SGT. BARTELS,
LT. BRUDAS, SGT. MURRAY, CPT. JULIE BIGGAR,
C.O. SCHNEIDER, and C.O. KORTMANN,

Defendants.

ORDER

05-C-04-C

Plaintiff has moved to substitute Richard Schneider as a defendant in place of Gerald Berge and Matthew Frank in place of Cindy O'Donnell, insofar as plaintiff is suing these defendants in their official capacity for declaratory and injunctive relief.

Fed. R. Civ. P. 25(d)(1) provides that when a public officer is sued in an official

capacity and ceases to hold office, his or her successor is substituted automatically. In his complaint, plaintiff has challenged the enforcement of several policies of the Wisconsin Department of Corrections and the Wisconsin Secure Program Facility. Effective March 6, 2005, Richard Schneider took Gerald Berge's place as the warden at the Wisconsin Secure Program Facility and in March 2004, Rick Raemisch was appointed to replace Cindy O'Donnell as Deputy Secretary of the Department of Corrections. Because Berge and O'Donnell no longer hold the positions of warden at the Wisconsin Secure Program Facility and deputy secretary for the Wisconsin Department of Corrections respectively, the substitution of their successors, Richard Schneider and Rick Raemisch is automatic. Matthew Frank is not properly substituted for Cindy O'Donnell under Fed. R. Civ. P. 25. He has been the Secretary of the Department of Corrections for more than six years, and was Secretary at the time plaintiff filed his lawsuit. If plaintiff believed he had viable legal claims against Frank, he should have named him in his original suit.

Plaintiff asks that defendants Berge and O'Donnell remain in the suit for the purpose of litigating his claims for money damages against them in their individual capacities. That request will be granted.

ORDER

IT IS ORDERED that Richard Schneider and Rick Raemish are substituted pursuant

to Fed. R. Civ. P. 25 on plaintiff's official capacity claims against Gerald Berge and Cindy O'Donnell, who no longer hold the respective positions of warden of the Wisconsin Secure Program Facility and deputy secretary of the Wisconsin Division of Corrections. The caption of this order and all subsequent filings are to reflect this substitution.

FURTHER, IT IS ORDERED that plaintiff's request for leave to substitute Matthew Frank in place of Cindy O'Donnell is DENIED.

Gerald Berge and Cindy O'Donnell will remain as defendants in this case on plaintiff's claims against them in their individual capacities.

Entered this 20th day of April, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge