

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

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ANTHONY CORDOVA,

Plaintiff,

ORDER

v.

07-C-172-C

GREGORY GRAMS, Warden, RICK  
RAEMISCH, Office of the Secretary,  
JANEL NICKEL, Security Director,  
JANET WALSH, Psychologist DS 1,  
DS1 first shift sergeant, RICKY PLATH,  
Bldgs and Grounds Supervisor, CAPTAIN  
DYLON RADTKE, Administrative Cpt.,  
DOCTOR SULIENE, physician, DR.  
JENS, Psychiatrist, DR. DANA  
DIEDRICH, Psychiatrist and JUSTIN  
McLIMANS<sup>1</sup>, Corrections Officer,

Defendants.  
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On March 26, 2007, plaintiff Anthony Cordova filed a complaint and supporting memorandum raising constitutional claims against a number of Wisconsin prison officials. In an order dated April 18, 2007, and April 30, 2007, I granted him leave to proceed in

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<sup>1</sup>The caption has been updated to reflect the correct spelling of defendant McLimans's name.

forma pauperis on a number of his claims but dismissed many others. Now before the court are three pending motions: (1) defendants' motion for clarification of the court's April 18, 2007 screening order;<sup>2</sup> (2) plaintiff's motion to supplement his complaint; and (3) plaintiff's renewed motion for appointment of counsel. Defendants' motion for clarification will be granted as detailed below. Plaintiff's motion to supplement his complaint will be denied as unnecessary and because his supplement violates Fed. R. Civ. P. 8, and his motion for appointment of counsel will be denied as premature.

#### A. Motion for Clarification

Having noticed a few discrepancies concerning which defendants remain a part of this lawsuit in light of this court's order of April 18, 2007, defendants have moved for clarification. Unfortunately, a review of the order confirms that edits intended to be made in it were inadvertently lost when the final draft was entered. I will address each discrepancy below.

In the April 18, 2007 order, I allowed plaintiff leave to proceed on his claim that defendant Sulienne violated his Eighth Amendment right to medical treatment by exhibiting

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<sup>2</sup>Defendants asked also for clarification of the court's April 30, 2007 order, but each concern defendants identify arises out of discrepancies in the April 18 order. Therefore, I have not included in this opinion a discussion of the April 30 order.

deliberate indifference to plaintiff's back pain, noting that although "it [was] not clear whether [plaintiff] will be able to show, at a later stage of the proceedings, [that] respondent Sulienne was aware of his back pain and deliberately failed to treat it," plaintiff had "done enough" to state a claim against defendant Sulienne. Dkt. #7, at 12. At pp. 2-3 of the order, however, I stated in a summary of the court's intended action that I would be granting plaintiff leave to proceed on his claim that "respondents *Sitzman* and Sulienne exhibited deliberate indifference to [plaintiff's] need for treatment of his back pain. . . ." Despite this statement, I did include any reference to *Sitzman* in the body of the order. This was because there were no allegations of wrongdoing against her in plaintiff's complaint. In ¶ 5 of the order portion of the opinion at p. 19, I dismissed *Sitzman* from the case.

In their motion for clarification, defendants ask whether *Sitzman* is or is not a defendant. She is not. I will amend the April 19 order to delete the reference to *Sitzman* at pp. 2-3 and to include at the conclusion of Section 2a., "Denial of medical care," at pp. 11-12, a paragraph noting that the absence of allegations of wrongdoing against *Sitzman* in plaintiff's complaint requires her dismissal from the action. (Because I included *Sitzman* in ¶ 5 of the order portion of the April 19 opinion and order as a defendant who was being dismissed from the case, it is not necessary to amend the order further with respect to her. She has not been served with plaintiff's complaint and defendants correctly have not included her in their answer or their motion to dismiss.)

Next, defendant requests clarification of the status of Matthew Frank and Richard Raemisch. As defendants surmise, Matthew Frank should not have been included in ¶ 5 of the order portion of the opinion and order as a defendant who was being dismissed from the action. In the body of the April 18 order at pp. 13-15, I discussed plaintiff's claim that his Eighth Amendment rights had been violated by a prison policy enforced by defendants "Radtke, Nickel, Grams and Frank that required food to be delivered through filthy traps in the bottom of cell doors." I stated that I would grant plaintiff leave to proceed with respect to this claim against Radtke, Nickel, Grams and Frank. Indeed, in the order portion of the April 18 order on p. 18, I granted plaintiff leave to proceed against Frank. Therefore, Frank's name should not have been included in the list of defendants being dismissed from the lawsuit at p. 19, ¶ 5. I will amend the order to delete him from that paragraph. I note, however, that the clerical mistake of including Frank among those being dismissed from the lawsuit was of little consequence. Correctly, Frank was served with plaintiff's complaint and defendants included Frank in their answer and motion to dismiss.

With respect to defendant Raemisch, defendants point out that although I did not grant plaintiff leave to proceed on any claims against defendant Raemisch, neither did I discuss him in the body of the complaint or officially dismiss him from the lawsuit. As was the case with defendant Sitzman, nowhere in plaintiff's complaint does he allege any wrongdoing against defendant Raemisch. Therefore, Raemisch should have been dismissed

from the case. Instead, he was served with plaintiff's complaint. Oddly, defendants did not move to dismiss Raemisch for plaintiff's failure to allege in his complaint that Raemisch participated personally in the violation of any of his constitutional rights. In any event, on the court's own motion, I will dismiss defendant Raemisch from this action for plaintiff's failure to allege any constitutional wrongdoing against him.

Finally, defendants ask whether they have been served with all of the documents from which the court drew the relevant facts in its April 18 order, because the "listing of the parties on pages 3-5 of the April 18, 2007 order" was not found in any of the documents served on the defendants. The record reveals that although plaintiff's complaint contains a caption, it is abbreviated and does not list each of defendants as Fed. R. Civ. P. 10(a) requires. Instead, plaintiff made a complete list of the defendants on a handwritten summons form he submitted to the court with his complaint. Because it is ordinarily this court's practice to refrain from sending summons forms to the Attorney General's office when this court utilizes the informal service agreement between the Department of Justice and the court as it did in this case, in this one instance, it would have been better to include a copy of the summons for the sole purpose of disclosing the names of the defendants as plaintiff had listed them. A copy of the summons form is enclosed to defendants' counsel with this order.

### B. Motion to Supplement the Complaint

On April 25, 2007, plaintiff filed a document weighing 3 lbs., 12 oz., that he has captioned as a “supplemental complaint.” I understand plaintiff to be asking the court to permit him to add this document to his already lengthy original complaint. The request will be denied.

Plaintiff’s proposed supplement begins with 28 pages of handwritten allegations against medical personnel who have not been named as defendants in this lawsuit. However, the majority of the supplement is composed of hundreds of medical records, inmate grievance forms, letters from prison officials, and various unidentified papers. Some of these bear an obvious connection to the matters at issue in this lawsuit, others do not. None of the documents is necessary at this stage in the proceedings.

Under Fed. R. Civ. p. 8(a)(2), a complaint should set forth a “short, plain statement of the claim[s]” being litigated. Permitting plaintiff to supplement his complaint with unnecessary, voluminous documents would not serve any purpose. Defendants have been put on notice of plaintiff’s claims against them. No more is needed.

### C. Motion for Appointment of Counsel

In the court’s April 18, 2007 screening order, I denied plaintiff’s first motion for appointment of counsel, explaining:

The Court of Appeals for the Seventh Circuit has held that before a district court can consider a motion for appointment of counsel made by an indigent plaintiff in a civil action, it must first find that the plaintiff made reasonable efforts to find a lawyer on his own and was unsuccessful or was prevented from making such efforts. Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). To show that he has made reasonable efforts to find a lawyer, a petitioner is required to submit the names and addresses of at least three lawyers that he asked to represent him and who turned him down. Petitioner has not complied with this preliminary step. Consequently, I must deny his motion. Petitioner remains free to renew his motion after he has sought representation from at least three lawyers without success.

Dkt. #7, at 17-18. Although plaintiff has filed a new motion, he has not so much as suggested that he has made one effort to contact a lawyer and ask for representation. Until plaintiff makes the required effort to contact three lawyers to request assistance in prosecuting this case, his motion for court-appointed counsel must be denied as premature.

#### D. Additional Matter

One other matter merits attention. First, on May 16, 2007, the attorney general's office accepted service of plaintiff's complaint on behalf of all of the defendants except defendant Justin McLimans, who is no longer employed by the Department of Corrections. The clerk of court has prepared marshals service and summons forms for this defendant, and is forwarding a copy of the complaint and the completed forms to the United States Marshal for service on him.

In completing the marshals service forms for defendant McLimans, the clerk has not

provided a forwarding address because this information is unknown. It will be up to the marshal to make a reasonable effort to locate defendant McLimans by contacting his former employer (in this case, the Department of Corrections) or conducting an internet search of public records for the defendant's current address or both. Sellers v. United States, 902 F.2d 598, 602 (7th Cir. 1990) (once defendant is identified, marshal to make reasonable effort to obtain current address). Reasonable efforts do not require the marshal to be a private investigator for civil litigants or to use software available only to law enforcement officers to discover addresses for defendants whose whereabouts are not discoverable through public records.

Also, for plaintiff's information, in Sellers, the court of appeals recognized the security concerns that arise when prisoners have access to the personal addresses of former or current prison employees. Id. For this reason prison employees often take steps to insure that their personal addresses are not available in public records accessible through the internet. If the marshal is successful in obtaining defendant McLimans's personal address, he is to maintain that address in confidence rather than reveal it on the marshals service form, because the form is filed in the court's public file and mailed to the plaintiff after service is effected.

#### ORDER

IT IS ORDERED that

1. Defendants' motion for clarification is GRANTED;
2. The April 19, 2007 order is AMENDED in the following respects:
  - a. the reference to defendant Sitzman in the sentence beginning at line 1 of ¶ 3 on pp. 2-3 is DELETED;
  - b. the following paragraph is inserted at the conclusion of Section 2a.,  
"Denial of medical care," on pp. 11-12,  
  
Because there are no allegations of wrongdoing against Sandra Sitzman raised in plaintiff's complaint, she will be dismissed from this action.
  - c. the reference to defendant Matthew Frank in ¶ 5 on p. 19 is DELETED;
3. On the court's own motion, defendant Rick Raemisch is DISMISSED from this action;
4. A copy of the summons plaintiff submitted with his complaint is enclosed with a copy of this order to defendants' counsel in order to complete defendants' copy of plaintiff's initial pleading.
5. Plaintiff's motion to supplement his complaint is DENIED as unnecessary and as violating Fed. R. Civ. P. 8.

6. Plaintiff's motion for appointment of counsel is DENIED as premature.

7. A copy of plaintiff's complaint is being forwarded to the United States Marshal for service on defendant Justin McLimans. The marshal is requested to refrain from listing McLimans's personal address on the process receipt form.

Entered this 6th day of June, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge