

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

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ROBERT G. HARKEY,

Plaintiff,

ORDER

v.

07-C-332-C

BECKY DRESSLER, Manager, SCI, HSU;  
PATTY SCHERREIKS, Registered Nurse, SCI, HSU;  
and EMILY BOWE, Sgt., SCI Security Staff,

Defendants.  
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Plaintiff Robert Harkey has filed documents titled “Motion to Order Plaintiff’s Transfer,” “Motion to Allow Plaintiff to Interview Witnesses,” and “Motion to Order Temporary Restraining Order.” Plaintiff’s motion for a transfer and temporary restraining order will be addressed together, because in each, plaintiff expresses concern that prison officials may be retaliating against him for his having filed this lawsuit. The motion to allow plaintiff to interview witnesses will be addressed separately, and first.

In his motion for an order requiring prison officials to permit plaintiff to “interview” witnesses, plaintiff lists the names of nine inmates currently residing at the Stanley Correctional Institution. He does not explain, however, why he is seeking court intervention into his apparent attempts to obtain information from potential witnesses. Because nothing

in plaintiff's motion suggests that prison officials are interfering in his efforts to communicate with persons he believes may be witnesses in this case, his motion for an order directing prison officials to allow him to interview witnesses will be denied.

In his motions for a transfer and for a temporary restraining order, plaintiff suggests that his placement in segregation for sixteen days and subsequent cell reassignments (four of them in the last month) are making it hard for him to "concentrate on his legal work." He contends that his constant movement and term in disciplinary segregation are indicators that he is being retaliated against for having filed this lawsuit. Therefore, he seeks a transfer to a new institution or an order barring defendants from retaliating against him or his witnesses.

Plaintiff's claim of retaliation is not properly raised on a motion for preliminary injunctive relief or in a motion for transfer in this case. In situations in which a plaintiff alleges that the defendants 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 which 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 Harkey says that his frequent movement is making it difficult for him

to concentrate on the steps he must take to move his case to resolution, but this is not the kind of physical interference that warrants court intervention on an alleged claim of retaliation. Plaintiff's lawsuit is in its earliest stages, with the preliminary pretrial conference having been held just one week ago. The steps plaintiff will have to take to move his case to resolution are documented in the preliminary pretrial conference order sent to him on September 13, 2007. That document serves to lead plaintiff, deadline by deadline, through the process of identifying and naming his witnesses, gathering his documentary evidence and preparing for summary judgment or trial. In the absence of proof that plaintiff is being prevented physically from prosecuting this action, his motions for a transfer or an order restraining defendants from retaliating against him for filing this lawsuit will be denied.

#### ORDER

IT IS ORDERED that

1. Plaintiff's "Motion to Allow Plaintiff to Interview Witnesses" is DENIED;
2. Plaintiff's "Motion to Order Temporary Restraining Order" is DENIED; and

3. Plaintiff's "Motion to Order Plaintiff's Transfer" is DENIED.

Entered this 21st day of September, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge