IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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NATE A. LINDELL,

ORDER

Petitioner,

07-C-484-C

v.

MATTHEW FRANK, STEVEN CASPERSON,
RICHARD SCHNEITER, PETER HUIBREGTSE,
RICHARD RAEMISCH, TOM GOZINISKE,
LT. TODD BRUDOS, LT. __ BOISEN, JOHN RAY,
KELLY TRUMM, ELLEN RAY, SGT. JUDITH
HUIBREGTSE, K.J. (A/K/A JANE DOE),
C.O.'S MICHAEL SHERMAN and SHANNON,

Respondents.

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Petitioner Nate A. Lindell, a prisoner at the Wisconsin Secure Program Facility in Boscobel, Wisconsin, has filed a proposed complaint and asked for leave to proceed <u>in</u> <u>forma</u> <u>pauperis</u>. In his complaint, petitioner asserts the following claims:

Claim 1 - On 9/10/06, respondent Shannon took 4 "postage embossed envelopes" from petitioner's cell. Petitioner filed a grievance and various respondents dismissed the grievance and subsequent appeals.

Claim 2 - On February 1, 2007, respondent K.J., a Jane Doe respondent, denied

petitioner's request to use money from his prison account to buy an Internet pen-pal ad. This prevented petitioner from "expressing himself." Petitioner filed a grievance and lost through his appeals.

Claim 3 - On July 21, 2006, petitioner filed a group complaint challenging Wis. Adm. Code 309.20.01, which says, "No commercially published photographs from retail outlets or vendors are permitted." This code provision "cripples" petitioner's artistic activity. Petitioner filed a grievance and the grievance was dismissed.

Claim 4 - On June 2, 2006, respondent Shannon and CO Boughton retaliated against petitioner for helping another inmate with his lawsuits by charging him in a conduct report with having "tried to send a 'legal route' to another prisoner containing a breakdown of" an appeal petitioner is prosecuting in the Supreme Court. Petitioner won his grievance and the conduct report was dismissed. The fact that the grievance was "pending for almost 20 days" caused petitioner to be "intimidated and fearful for many days in the extreme."

Claim 5 - On July 28, 2007, respondent Shannon and CO Boughton retaliated against petitioner for litigating case no. 06-C-608-C by bringing back "some copies of items that [petitioner] had made for case 06-C-608," and demanding that petitioner sign a receipt for them without showing petitioner the copies first. The incident escalated when petitioner asked to see the copies and eventually "threw up a fist" in response to a "goofy face" Shannon made outside petitioner's cell window. Petitioner was given a conduct report for

this incident which was dismissed, but petitioner suffered "anxiety and distress in the extreme" while the conduct report was pending.

Claim 6 - On September 17, 2006, petitioner filed a group complaint "signed by several other prisoners." In retaliation, respondent Kelly Trumm recommended that the complaint be dismissed and sent to security staff for the purpose of charging petitioner with forging the signature of another inmate. According to Trumm, she spoke with inmate Keller, whose signature Trumm questioned, and Keller told Trumm he did not sign the complaint. This was not true. On petitioner's appeal, inmate Keller provided a statement saying he never told Trumm he didn't sign the group complaint, but despite this, respondent John Ray recommended denial of the appeal and respondent Raemisch adopted the recommendation. On October 30, 2006, petitioner received a conduct report from Todd Brudos charging him with forging Keller's signature. Brudos did not talk to Keller first. Boughton approved the conduct report and "made it a minor." On November 16, 2006, a disciplinary hearing was held. Respondent Boisen was the hearing officer. Petitioner offered Keller's affidavit and testified that he didn't forge anyone's signature. No handwriting analysis was done. Someone else could have forged Keller's signature. Petitioner was found guilty and sentenced to 180 days of disciplinary separation (a major penalty). Petitioner appealed the disciplinary action, contending that he believed he was being retaliated against for having filed a group complaint and that his penalty was extreme. On December 11, 2006,

respondent Huibregtse affirmed the disciplinary action. Petitioner filed an inmate complaint challenging the disciplinary action on December 14, 2006. Respondent Ellen Ray recommended dismissal and, on appeal from respondent Huibregtse's acceptance of Ray's recommendation, respondent Tom Gozinski recommended that the discipline be expunged because of many errors, including that petitioner got a major penalty for a minor conduct report and respondent Boisen did not document his reason for finding petitioner guilty. Respondent Raemisch accepted Gozinske's recommendation and ordered the disciplinary action expunged, which it was on February 23, 2007. Although the conduct report was eventually expunged, petitioner was put in Alpha Unit for at least 20 days. Respondents Trumm, Brudos, Huibregtse, Ellen Ray Raemisch, Boughton, Boisen and John Ray took the actions they did in retaliation for petitioner's having filed the group complaint.

There are two reasons I cannot allow petitioner to proceed in forma pauperis in this action, both of which stem from a recent opinion issued by the Court of Appeals for the Seventh Circuit, George v. Smith, --- F.3d ---, No. 07-1325 (7th Cir. Oct. 17, 2007) (copy attached). First, as I will explain below, petitioner has struck out under 28 U.S.C. § 1915(g) and, therefore, is not eligible to proceed in forma pauperis. Second, petitioner's complaint appears to contain several separate actions that are not properly joined in one lawsuit under Fed. R. Civ. P. 20. Therefore, if petitioner decides to prosecute an action, he will have to amend his complaint to divide the claims in accordance with the requirements of Rule 20.

A. Petitioner's Three Strike Status

In an order dated August 30, 2007, I assessed petitioner a $1.50 initial partial payment of the $350 fee for filing this action, which petitioner paid on September 27, 2007. At the time, I had not recorded three strikes against petitioner under the 1996 Prison Litigation Reform Act. However, on November 9, 2007, while petitioner's complaint was awaiting screening under 28 U.S.C. § 1915(e)(2), the Court of Appeals for the Seventh Circuit issued its opinion in George v. Smith. In that case, the court ruled that a strike under § 1915(g) is to be recorded against any prisoner who files a complaint in which "*any claim*" in the complaint is determined to be frivolous, malicious or to fail to state a claim upon which relief may be granted. (Emphasis in original.)

Petitioner Lindell has a documented history of filing behemoth complaints charging multiple defendants with multiple wrongdoings. In at least seven of those cases, this court dismissed in its screening order one or more of petitioner's claims as legally frivolous or for failure to state a claim upon which relief may be granted. See, e.g., Lindell v. Schneiter, 06-C-608-C (decided Nov. 13, 2006); Lindell v. Frank, 05-C-03-C (decided Mar. 8, 2005); Lindell v. Goviere, 02-C-473-C (decided May 26, 2004); Lindell v. Litcher, 02-C-21-C (decided May 28, 2002); Lindell v. Daley, 02-C-459-C (decided Dec. 3, 2002); Lindell v. Doe, 01-C-209-C (decided Lindell v. Litscher, 02-C-79-C (decided May 3, 2001). Applying

these cases against petitioner's three-strike quota as George now requires, I conclude that petitioner has struck out. Abdul-Wadood v. Nathan, 91 F.3d 1023 (7th Cir. 1996)(application of § 1915(g) not impermissibly retroactive). This means that so long as he remains a prisoner, petitioner is barred by § 1915(g) from proceeding in forma pauperis in any new action like this one, that fails to meet the imminent danger exception described in § 1915(g).

B. Petitioner's Separate Lawsuits

In George, the court of appeals ruled that a prisoner may not "dodge" the fee payment provision in the Prison Litigation Reform Act by filing unrelated claims against different defendants in one lawsuit. Rather, district courts must sever unrelated claims against different defendants or sets of defendants and require that the claims be brought in separate lawsuits. The court reminded district courts that Fed. R. Civ. P. 20 applies as much to prisoner cases as it does to any other case.

Fed. R. Civ. P. 20(a) governs the number of parties a plaintiff may join in any one action. It provides that a plaintiff may sue more than one defendant when his injuries arise out of "the same transaction, occurrence, or series of transactions or occurrences" and when there is "any question of law or fact common to all defendants." Rules 18 and 20 operate independently. 7 Charles Alan Wright et al., Federal Practice & Procedure, § 1655 (3d ed.

1972). Thus, multiple defendants may not be joined in a single action unless the plaintiff asserts at least one claim to relief against each of them that arises out of the same transaction or occurrence or series of transactions or occurrences *and* presents questions of law or fact common to all. Id.; 3A Moore's Federal Practice ¶ 20.06, at 2036-2045 (2d ed. 1978). If the requirements for joinder of parties have been satisfied under Rule 20, only then may Rule 18 be used to allow the plaintiff to join as many other claims as the plaintiff has against the multiple defendants or any combination of them, even though the additional claims do not involve common questions of law or fact and arise from unrelated transactions. Intercon Research Assn., Ltd. v. Dresser Ind., Inc., 696 F.2d 53, 57 (7th Cir. 1983) (quoting 7 Charles Alan Wright et al., Federal Practice & Procedure).

In applying Rule 20 to this case, I conclude that plaintiff's complaint must be divided into at least five separate lawsuits. The only claims identified above that may be joined in a single lawsuit together are claims 3 and 4, in which plaintiffs seeks to sue respondent Shannon for retaliating against him on June 2 and again on July 28, 2007 (although petitioner asserts that CO Boughton joined Shannon in the retaliation, he has not named Boughton as a respondent.) Otherwise, the claims do not arise out of the same transaction or occurrence or series of transactions or occurrences or present questions of law or fact common to all.

C. Summary

In summary, petitioner may not proceed in this case on any one of his claims (or claims 4 and 5 together) unless he first pays the remainder of the filing fee ($348.50) and amends his complaint to eliminate the claim that belong in separate lawsuits. He may file any one of the remaining claims in separate lawsuits so long as he prepays the $350 filing fee. Alternatively, petitioner may choose to dismiss all of his claims voluntarily. If he chooses this latter route, plaintiff will not owe additional filing fees (although the court will apply petitioner's $1.50 initial partial payment toward the debt he owes in his other cases. If petitioner dismisses this lawsuit voluntarily, the dismissal will be without prejudice, so petitioner will be able to raise his claims in properly separated lawsuits at another time.

ORDER

IT IS ORDERED that petitioner Nate A. Lindell's request for leave to proceed in forma pauperis is DENIED because petitioner is ineligible for in forma pauperis status under 28 U.S.C. § 1915(g).

Further, IT IS ORDERED that petitioner may have until December 27, 2007, in which to submit a check or money order made payable to the clerk of court in the amount of $348.50 ($350 minus the $1.50 initial partial payment petitioner has already paid), together with an amended complaint that contains only one of Claims 1, 2, 3 or 6, or Claims

4 and 5. If, by December 27, 2007, petitioner fails to pay the remainder of the fee, I will consider that petitioner has withdrawn this case voluntarily and the clerk of court is directed to close this file and apply petitioner's $1.50 payment toward the debt he owes for filing his earlier cases.

Entered this 7th day of December, 2007.

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