

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

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DAMIEN GREEN,

Plaintiff,

v.

ORDER

10-cv-485-slc

DARCI BURRESON, JENNIFER NICKELS, KIM  
CAMPBELL, STEVE HELGERSON, LORI  
ALSUM, DALIA SULIENE, PAUL PERSSON,  
PAW KETARKUS, NANCY HAHNISCH,  
NATALIE NEWMAN, SHAWNA ELDER, JEFF  
VANA, KIMM JOHNSON,

Defendants.

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This a proposed civil action for monetary relief brought under 42 U.S.C. § 1983. Pro se plaintiff Damien Green is suing defendants for failing to provide him with adequate medical treatment under the Eighth Amendment. Now before the court are plaintiff's motions to move to another institution and for summary judgment. Dkt. ## 20 and 22. Both motions will be denied.

Plaintiff's request for a transfer out of the Columbia Correctional Institution for the reason that prison officials are retaliating against him for his legal activities is not properly raised in the context of this lawsuit. It is this court's policy to require a plaintiff alleging retaliation for initiating a lawsuit to present the claim 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. If plaintiff wants to raise a claim that prison officials are retaliating against him for filing this lawsuit, he will have to do so in a separate lawsuit after he exhausts his administrative remedies.

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.

If plaintiff were to make this showing, then I would ask defendants' counsel to look into the matter and report the circumstances to the court.

Turning next to plaintiff's motion for summary judgment, this motion will be denied without prejudice to plaintiff's bringing a proper summary judgment motion later in this case. Initially, I note that it is premature to be filing a summary judgment motion on the merits of this case. There has been no discovery conducted to obtain relevant facts. In fact, as of the issuance of this order, defendants have not yet filed their answer and there has not been a pretrial conference.

Furthermore, plaintiff's motion fails to comply with this court's summary judgment procedures. For example, instead of filing proposed findings of fact, plaintiff attached documents as exhibits to his motion. Besides the attachments being inadmissible because there is no affidavit regarding the authenticity of the documents, the failure to file proposed findings of fact violates this court's procedures. Plaintiff's failure comes as no surprise because he has not yet received those procedures, which also include information about how to authenticate documents for admission on summary judgment. He will receive that information at the pretrial conference, which will be scheduled after defendants file their answer to the complaint.

Accordingly, plaintiff's motion will be denied for failure to comply with this court's summary judgment procedures. *Bordelon v. Chicago School Reform Board of Trustees*, 233 F.3d 524, 527 (7<sup>th</sup> Cir. 2000) (district court can require "strict compliance" with local rules governing summary judgment). Nonetheless, the denial will be without prejudice to plaintiff filing a future summary judgment motion that complies with this court's procedures so that plaintiff, who is proceeding pro se, receives a "fair shake." *Dale v. Poston*, 548 F.3d 563, 568 (7<sup>th</sup> Cir. 2008).

In addition, plaintiff's exhibits and other evidentiary materials are being returned to him so that they may resubmit them at a later time, if appropriate.

#### ORDER

It is ORDERED that:

- (1) Plaintiff Damien Green's motion to be transferred to another institution, dkt. 20, is DENIED.
- (2) Plaintiff's motion for summary judgment, dkt. 22, is DENIED without prejudice.
- (3) The clerk of court is directed to return to plaintiff the exhibits and evidentiary materials so that he may resubmit them at a later time. A copy of the documents will be retained in the court's file for record purposes only.

Entered this 13<sup>th</sup> day of February, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge