

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

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GREGORY SEAN GORAK,

Plaintiff,

v.

JOHN PAQUIN, RICK RAEMISCH,  
KAREN SOLOMAN and RUSSEL BAUSCH,

Defendants.  
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ORDER

11-cv-130-bbc

Plaintiff Gregory Sean Gorak is proceeding on a claim that defendant violated his due process rights by failing to allow him to call witnesses at a disciplinary hearing. He has filed a motion for reconsideration of the court's decision to dismiss the amended complaint as to Gary Hamblin because he did not include any allegations about Hamblin in the complaint. It seemed that plaintiff wished to include Hamblin simply because he is Secretary of the Wisconsin Department of Corrections, but I informed plaintiff that high ranking officers cannot be sued for constitutional violations simply because they supervise others who may have been involved.

In his motion, plaintiff "conce[de]s that Hamblin himself has no first-hand

involvement in or knowledge of the facts of the complaint,” but he believes that it is appropriate to include Hamblin as a defendant under Fed. R. Civ. P. 25(d) as the successor to defendant Rick Raemisch, who was the previous Secretary.

Plaintiff’s argument has two flaws. First, Rule 25(d) does not allow plaintiffs to add more defendants as plaintiff is trying to do, but is limited to the substitution of one office holder for another in the event that the original defendant leaves office. Second, Rule 25(d) is limited to claims against officers who are sued in their “official capacity.” In the context of a case such as this one brought under 42 U.S.C. § 1983 against state employees, a claim against a defendant in his “official capacity” is a claim for injunctive relief. Will v. Michigan Dept. of State Police, 491 U.S. 58, 71 (1989). The reason for the rule is to insure that someone who has the power to enforce an injunction stays in the case.

Although plaintiff says nothing about injunctive relief in his motion, a review of his amended complaint shows that he did request it. In particular, he asked that “all WI DOC Disciplinary Hearing Committee Members be required to review inmate’s exculpatory evidence prior to drafting or completing the disciplinary hearing & disposition.” This requested injunction is directed to hearing officers, not the Secretary, but even if I assume that the Secretary would be needed to enforce the proposed injunction, plaintiff has included no allegations in his complaint suggesting that he would be entitled to the injunction he seeks. In particular, he includes no allegations that defendants’ failure to consider his

evidence was the result of a problem that would require the Secretary's involvement to resolve, such as an unconstitutional policy or a consistent problem that extends to all hearing officers rather than just the two in this case. Under 18 U.S.C. § 3626, a court may not grant injunctive relief in a prisoner rights case "unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." To the extent plaintiff's allegations support any award of injunctive relief, it would be limited to those who violated his rights.

#### ORDER

IT IS ORDERED that plaintiff Gregory Sean Gorak's motion for reconsideration, dkt. #12, is DENIED.

Entered this 27th day of May, 2011.

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