

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

---

DAVID A. SCHLEMM,

Plaintiff,

v.

MATTHEW J. FRANK, PHIL KINGSTON and  
EDWARD WALL,

Defendants.

---

ORDER

11-cv-272-wmc

In this prisoner civil rights case, plaintiff David Schlemm is proceeding on his claim that defendants violated his rights under the Religious Land Use and Institutionalized Persons Act and the free exercise clause of the First Amendment. Defendants have filed a motion for summary judgment on the ground that plaintiff failed to exhaust his administrative remedies before bringing this lawsuit. Plaintiff was given until April 1, 2013 to submit his materials in opposition to defendants' motion.

Now plaintiff has filed a motion for an extension of time to file his opposition materials, stating that he has had difficulty researching defendants' motion because he is not being allowed to access the prison law library. However, it is unclear why plaintiff believes he needs to visit the law library in order to respond to defendants' motion. The question whether plaintiff has exhausted his administrative remedies is completely fact-based: either plaintiff did or did not follow the required grievance procedures. If he did, then all he has to do is provide the court with documentation of that, namely photocopies of his complaint, the denial, his appeals, the denials, all the way up the chain. If he did not, then he must explain why not, so that the court can decide whether or not the procedures were "available" to him. This information cannot be obtained from the law library.

Nevertheless, because defendants' motion was filed in the earliest stages of this lawsuit and because plaintiff's deadline for opposing defendants' motion has passed, I will grant him a short extension of time to submit his opposition materials. This will be the only extension plaintiff receives with respect to the present motion for summary judgment on exhaustion grounds.

#### ORDER

IT IS ORDERED that plaintiff David Schlemm's motion for an extension of time, dkt. 19, to file his materials in opposition to defendants' motion for summary judgment is GRANTED. Plaintiff may have until April 19, 2013, to file his opposition materials. Defendants may have until April 26, 2013, to file a reply.

Entered this 4<sup>th</sup> day of April, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
District Judge