

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

ALAN DAVID McCORMACK
and all other similarly situated Wisconsin
State Inmates and Citizens of Wisconsin,

Plaintiffs,

OPINION AND ORDER

12-cv-535-bbc

v.

GARY H. HAMBLIN, Secretary, his Wardens,
Superintendents, Agents, Designees, and any Successors,
WISCONSIN DEPARTMENT OF CORRECTIONS,
KATHRYN R. ANDERSON, HELEN E. KENNEBECK,
DANIEL A. WESTFIELD,
DIVISION OF ADULT INSTITUTIONS,
COREY BENDER, JODINE DEPPISCH,
KAREN GOURLIE, THOMAS J. GOZINSKE,
ANGELA HANSEN, CATHY A. JESS, FLOYD MITCHELL,
MOLLY S. OLSON, JAMES PARISI,
WELCOME F. ROSE, RENEE SCHUELER,
BUREAU OF HEALTH SERVICES,
DAVID BURNETT, JAMES LABELLE,
BUREAU OF OFFENDER CLASSIFICATION AND MOVEMENT,
MARK K. HEISE, ACCESS SECUREPAK,
DOUGLAS ALBRECHT, JACK L. MARCUS, INC.,
DEBRA WALTON, UNION SUPPLY DIRECT,
TOM THOMAS, WALKENHORST'S, DOUGLAS ALBRECHT,
WISCONSIN DEPARTMENT OF JUSTICE, VAN HOLLEN, J.B., and
DODGE COUNTY CIRCUIT COURT, et al,

Defendants.

Pro se plaintiff Alan David McCormack has filed a 139-page proposed complaint in which he raises eighteen claims against at least 33 defendants, ranging from federal and state

antitrust claims to equal protection, due process and Eighth Amendment claims under 42 U.S.C. § 1983 and 42 U.S.C. § 1985. Plaintiff has made an initial partial payment as required by 28 U.S.C. § 1915(b). Because plaintiff is a prisoner, I must screen his complaint to determine whether it states a claim upon which relief may be granted. 28 U.S.C. §§ 1915(e)(2) and 1915A.

Having reviewed plaintiff's complaint, I conclude that one of plaintiff's claims must be dismissed for failure to state a claim and that I cannot screen the remaining claims at this time because his complaint violates Fed. R. Civ. P. 20.

Plaintiff has also filed a "motion for relief," dkt. #6, and a motion for appointment of counsel. Dkt. #4. I will deny plaintiff's motion for a preliminary injunction because his motion is not supported by proposed facts as required by this court's rules. I will reserve decision on plaintiff's motion for appointment of counsel until after he decides which claims he wants to pursue in this suit and his complaint has been screened.

A. Inmate Complaint Review System

As an initial matter, I will dismiss one of plaintiff's claims for failure to state a claim. Plaintiff alleges that "defendants" are violating his due process rights and impeding his access to the courts by operating the Inmate Complaint Review System in ways that interfere with inmates' use of the review process, such as by allowing institutional complaint examiners to coach witnesses, withhold complaint forms and not providing inmates with adequate training about how to use the system. Cpt., dkt. #1, at 66-67. This claim is legally frivolous. The

right of access to the courts prohibits officials from interfering with a prisoner's ability to file and maintain a lawsuit and requires them to provide prisoners with a reasonable opportunity to present their claims to a court. Lewis v. Casey, 518 U.S. 343, 351 (1996). However, prison authorities are under no constitutional obligation to provide an effective grievance system or, for that matter, any grievance system at all. Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir. 1993); see also Antonelli v. Sheahan, 81 F.3d 1422, 1431 (7th Cir. 1996). If prison officials fail to investigate grievances adequately or to educate inmates about how to use the system, this certainly runs counter to the problem-solving purpose of a grievance system, but it does not prevent prisoners from filing lawsuits or otherwise interfere with their constitutional rights.

B. Joinder of Claims and Defendants

I have not screened plaintiff's remaining claims because plaintiff raises claims against many defendants who are not properly joined in a single lawsuit. Defendants may not be joined in a single action unless the plaintiff asserts at least one claim to relief against each defendant 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. Fed. R. Civ. P. 20(a)(2); George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007); 3A Moore's Federal Practice § 20.06, at 2036-2045 (2d ed.1978).

Although Fed. R. Civ. P. 18 allows a party to join unrelated claims against defendants in a suit, this rule applies only after the requirements for joinder of parties have been

satisfied under Rule 20, Intercon Research Association, Ltd. v. Dresser Industries, Inc., 696 F.2d 53, 57 (7th Cir. 1983), which means that the core set of allowable defendants must be determined under Rule 20 before a plaintiff may join additional unrelated claims against one or more of those defendants under Rule 18. This means also that under Rule 18, a party cannot join claims involving any defendant outside the group identified under Rule 20.

Applying Rules 18 and 20 to the factual allegations in the complaint, I conclude that plaintiff is raising claims that belong in four different lawsuits:

Lawsuit #1:

- (a) Defendants the Wisconsin Department of Corrections, the Division of Adult Institutions, Gary Hamblin, Kathryn Anderson and Daniel Westfield violated federal and state anti-trust, unfair competition and anti-corruption statutes by requiring defendants Access Securepak, J.L. Marcus, Inc., Union Supply Direct and Walkenhorst's to include a hidden 10% kickback and 5% sales tax in the prices in their "Canteen Catalog" and then also charging 5% state sales tax on purchases by prisoners.
- (b) Defendants Thomas Gozinske, Ree Schueler, Karen Gourlie, Welcome F. Rose and the Office of the Secretary were "knowledgeable" or were "notified of, and aware of, these ongoing outlawry activities," but failed to take any actions to correct them.
- (c) Defendants Wisconsin Department of Justice and J.B. Van Hollen violated 42 U.S.C. § 1986 by failing to exercise control or oversight over the Department of Corrections *with respect to the kickback conspiracy*.

(At the end of his anti-trust claim, plaintiff alleges that Citizens for Equal Justice's open records requests show that 59 other individuals were "directly involved" in these activities. Many of these individuals are not named as defendants in the caption of the complaint. In any case, I will dismiss the antitrust claims against these individuals under Federal Rule of Civil Procedure 8. Under Rule 8, a complaint must include enough facts to

give the defendants notice of the claim and their basis. Because plaintiff offered no facts about how each of these 59 individuals was involved in the antitrust conspiracy, I will dismiss the antitrust claims against them without prejudice.)

Lawsuit #2:

- (a) Defendants Department of Corrections, Division of Adult Institutions and Hamblin are refusing to comply with Wisconsin Statutes §§ 304.02, 301.055, 301.048, and 301.046, which relate to population limits and parole, in order to cause artificial prison overcrowding.
- (b) The Department of Corrections, the Division of Adult Institutions and Hamblin suspended all published guidelines accessible to state inmates, including Custody Classifications and Risk Ratings, preventing inmates from progressing through the prison system, causing unequal treatment for similar progress by different inmates and making it easier for prison officials to manipulate parole decisions.
- (c) Defendants Department of Corrections, Division of Adult Institutions, Hamblin and the Bureau of Health Services secretly approved an Infection Control Program that permits prisons to place sick inmates with infectious diseases in double or triple cells with healthy inmates and permits sick inmates to handle meals for the general population.
- (d) Defendants Department of Corrections and Division of Adult Institutions run the state's prison disciplinary process in ways that violate prisoners' constitutional rights, such as by withholding exculpatory evidence, not appointing independent advocates or not taping hearings.

Lawsuit #3:

- (a) Defendants Department of Corrections, Division of Adult Institutions and Hamblin are refusing to comply with Wis. Stat. §§ 304.02, 301.055, 301.048, and 301.046, which relate to population limits and parole, in order to cause artificial prison overcrowding.
- (b) The Department of Corrections, Division of Adult Institutions and Hamblin suspended all published guidelines accessible to state inmates, including

Custody Classifications and Risk Ratings, preventing inmates from progressing through the prison system, causing unequal treatment for similar progress by different inmates and enabling prison officials to manipulate parole decisions.

- (c) Defendant Bureau of Offender Classification and Movement and Mark Heise are intentionally withholding decisions on recommendations from the Program Review Committee “for months, generally until 2 to 3 weeks before that State inmates next Parole or PRC hearing” and appeals from decisions made by Heise are reviewed only by his subordinates.
- (d) Defendants Bureau of Offender Classification and Movement, Mark Heise and Corey Bender retaliated against plaintiff for filing a petition for supervisory writ with the Wisconsin Supreme Court about Heise’s handling of the parole system by (1) rejecting the Parole Commission’s repeated recommendations that plaintiff be transferred to minimum custody and (2) conspiring to falsify the records from plaintiff’s Parole Review Commission hearing (by not taping hearings, by falsifying the written records of the hearing and denying plaintiff’s open records requests).
- (e) Defendants Angela Hansen, James Parisi, Molly Olson, Floyd Mitchell, Jodine Deppisch, Hamblin, Cathy Jess, Schueler, Gourlie, Rose and Anderson participated in Heise’s retaliation by considering the appeal from Heise’s decisions or reviewing complaint filed by plaintiff.
- (f) Defendants Wisconsin Department of Justice and J.B. Van Hollen violated 42 U.S.C. § 1986 by failing to exercise control or oversight over the Department of Corrections *with respect to the retaliation*.
- (f) Defendant Dodge County Circuit Court dismissed plaintiff’s petition for writ of habeas corpus, which was based on defendant Heise’s retaliatory decision not to approve plaintiff’s parole recommendations. The court made its decision without reading the petition and in reliance on misrepresentations made by defendant Helen Kennebeck during ex parte communications.
- (g) Defendants Department of Corrections and Division of Adult Institutions run the state’s prison disciplinary process in ways that violate prisoners’ constitutional rights, such as by withholding exculpatory evidence, not appointing independent advocates or not taping hearings.
- (h) Wis. Stat. § 302.114, entitled Petition for Release and Release to Extended Supervision, violates the equal protection clause of the Fourteenth Amendment because it treats offenders sentenced to life imprisonment after

December 31, 1999 differently from those sentenced before that date.

Lawsuit #4:

- (a) Defendants Bureau of Health Services, David Burnett and James LaBelle violated plaintiff's rights under the Eighth Amendment by denying him surgery for his umbilical hernia without performing any examination and in contradiction to the recommendations of an "attending physician."
- (b) Defendants Schueler, Gourlie and Rose denied plaintiff's inmate complaints regarding the hernia without performing adequate investigation.

Under George, I may apply the initial partial payment plaintiff has made to only one of the lawsuits identified above. Plaintiff will have to choose which lawsuit that is. Once he does so, that lawsuit will be the only lawsuit assigned to this case number.

As for the other lawsuits, plaintiff has a more difficult choice. He may choose to pursue those lawsuits separately. In that case, he will be required to pay separate filing fees for each lawsuit. In addition, plaintiff may be subjected to a separate strike under 28 U.S.C. § 1915(g) for each of the separate lawsuits he pursues if the lawsuit is dismissed for failure to state a claim upon which relief may be granted. As plaintiff may be aware, once a prisoner receives three strikes, he is not able to proceed in new lawsuits without first paying the full filing fee except in very narrow circumstances. 28 U.S.C. § 1915(g).

Alternatively, plaintiff may choose to dismiss one or more of the other lawsuits voluntarily. If he chooses this latter route, he will not owe additional filing fees or face a strike for any lawsuit he dismisses. Any lawsuit dismissed voluntarily would be dismissed without prejudice, so plaintiff would be able to bring it at another time, so long as he files

it before the limitations period expires under the applicable statute of limitations.

Plaintiff should be aware that because it is not clear at this time which of his separate lawsuits he will pursue, I have not assessed the merits of the claims raised in any of the lawsuits identified above or determined whether they comply with Fed. R. Civ. P. 8. Once plaintiff identifies the suit or suits he wants to continue to litigate, I will screen the complaint as required under 28 U.S.C. § 1915(e)(2). Because plaintiff faces filing fees and potential strikes for each lawsuit he pursues, when he chooses which of them he wishes to pursue, he should consider carefully the merits and relative importance of each of his potential lawsuits.

If plaintiff disagrees with the way the court has grouped his claims or if he believes the court has left out claims he intended to assert or included claims he did not intend to assert, he may raise those objections in his response, but he must still comply with this order and choose which of the four lawsuits he wishes to pursue. If he fails to do so, I will dismiss all of his claims for his failure to prosecute the case.

C. Motion for a Preliminary Injunction

Plaintiff also filed a “motion for relief,” which I interpret as a motion for a preliminary injunction because he asks for a hearing and immediate relief. (Plaintiff asks the court to convene a three judge hearing and cites various federal and state statutes, none of which are applicable to this case.) Before a plaintiff can receive preliminary injunctive relief in this court, he must comply with the Procedure To Be Followed On Motions For Injunctive

Relief, a copy of which I am including with this order. In particular, plaintiff must file with the court proposed findings of fact supporting his claim and submit with his proposed findings of fact any evidence he has to support his request. In addition, he must show that he meets the standard for obtaining preliminary injunctive relief. River of Life Kingdom Ministries v. Village of Hazel Crest, 585 F.3d 364, 369 (7th Cir. 2009) ("A preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion. To obtain such relief, the moving party must first demonstrate that it has a reasonable likelihood of success on the merits, lacks an adequate remedy at law, and will suffer irreparable harm.").

In this case, plaintiff did not follow this court's procedures and did not include evidence with his motion showing that he is entitled to injunctive relief. Most of plaintiff's motion is a summary of the allegations in his complaint. He does not explain in any detail why he believes he needs immediate relief. Accordingly, I am denying his motion for a preliminary injunction without prejudice.

ORDER

IT IS ORDERED that

1. Plaintiff Alan David McCormack's "motion for relief," dkt. #6, is DENIED without prejudice.

2. Plaintiff's motion for appointment of counsel is RESERVED for a later ruling.

3. Plaintiff may have until November 16, 2012, to identify for the court whether he

wishes to proceed with Lawsuit #1, Lawsuit #2, Lawsuit #3 OR Lawsuit #4 under the number assigned to this case. Plaintiff must pick one and only one of these lawsuits to proceed under case no. 12-cv-535-bbc.

4. Plaintiff may have until November 16, 2012, to advise the court of which other lawsuits he wishes to pursue under separate case numbers, if any, and which lawsuits he will withdraw voluntarily, if any.

5. For any lawsuit that plaintiff dismisses voluntarily, he will not owe a filing fee.

6. For each lawsuit plaintiff chooses to pursue, he will owe a separate \$350 filing fee and will be assessed an initial partial payment.

7. If plaintiff fails to respond to this order by November 16, 2012, I will enter an order dismissing the lawsuit as it presently exists without prejudice for petitioner's failure to prosecute.

Entered this 2nd day of November, 2012.

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