

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,

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.

In an order entered November 2, 2012, I concluded that the complaint filed by pro se plaintiff Alan David McCormack violated Federal Rule of Civil Procedure 20 and directed

plaintiff to inform the court which of four separate lawsuits contained in his complaint he wanted to pursue by November 16, 2012. Plaintiff has now filed a motion for temporary stay. Dkt. #10. Plaintiff asks for a thirty-day stay so that he may (1) file a motion for class certification,(2) file a motion to amend his complaint to include additional allegations that defendants' retaliated against him for filing this lawsuit, and (3) obtain legal counsel.

I will deny plaintiff's motion for a stay. A stay is unnecessary because nothing will happen in plaintiff's case until he responds to this court's November 2 order. Moreover, neither of plaintiff's proposed motions would be appropriate at this time.

First, his proposed motion for class certification would be premature. Before the court may certify a class action, four prerequisites must be met:

(1) The class [must be] so numerous that joinder of all members is impracticable, (2) there [must be] questions of law or fact common to the class, (3) the claims or defenses of the representative parties [must be] typical of the claims or defenses of the class, and (4) the representative parties [must] fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). In his complaint, plaintiff asserts that his lawsuit involves a class consisting of all inmates imprisoned in Wisconsin and all citizens of Wisconsin. I chose not to address the class certification issue in the last order, for two reasons. First, whether the class involves common questions of law or fact and whether the plaintiff (as the representative party) has claims that are typical of the class depends on which lawsuit plaintiff chooses to pursue. Second, until plaintiff is represented by counsel, he cannot fairly and adequately protect the interests of the class. Because absent class members are bound by a judgment whether for or against the class, they are entitled at least to the assurance of

competent representation afforded by licensed counsel. Oxendine v. Williams, 509 F.2d 1405, 1407 (4th Cir. 1975); see also King v. Frank, 328 F. Supp. 2d 940, 950 (W.D. Wis. 2004); Huddleston v. Duckworth, 97 F.R.D. 512, 514-15 (N.D. Ind. 1983) (prisoner proceeding pro se not allowed to act as class representative).

Second, a motion to amend the complaint to add another retaliation claim would only aggravate plaintiff's Rule 20 problem. When a plaintiff alleges that the defendants have retaliated against him for bringing a lawsuit, it is the policy of this court to require plaintiff to present his retaliation claim in a lawsuit separate from the one that allegedly provoked the retaliation. This prevents the complication of issues that often results from the ongoing accumulation of claims in one action. The events underlying a lawsuit and the alleged retaliation for filing that lawsuit are distinct. The court recognizes an exception to this policy only where it appears that the alleged retaliation directly and physically impairs the plaintiff's ability to prosecute his lawsuit.

Nevertheless, I will give plaintiff an additional two weeks in which to respond to the court's November 2, 2012 order so that he may pursue legal representation. Plaintiff says that he is close to obtaining legal counsel, which would facilitate this litigation. By November 30, 2012, plaintiff must either file his response to this court's November 2 order or file a notice of appearance from legal counsel. If plaintiff does not file a response or a notice of appearance by that date, the court will dismiss plaintiff's case for failure to prosecute.

ORDER

IT IS ORDERED that plaintiff Alan David McCormack's motion for temporary stay, dkt. #10, is DENIED. Plaintiff may have until November 30, 2012 to either respond to this court's order entered November 2, 2012 or file a notice of appearance from legal counsel. If plaintiff fails to respond by November 30, 2012, I will enter an order dismissing the lawsuit as it presently exists without prejudice for petitioner's failure to prosecute.

Entered this 9th day of November, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge

