IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

NATHANIEL ALLEN LINDELL,

Plaintiff,

v.

STEVEN CASPERSON, MATTHEW FRANK,
JON E. LITSCHER, LAURA WOOD,
GERALD BERGE, PETER HUIBREGTSE,
GARY BOUGHTON, VICKI SEBASTIAN,
CPT. TIMOTHY HAINES, LINDA HODDY,
CINDY O'DONNELL, LT. GARDINER,
JULIE BIGGAR, SGT. HANKE, TODD OVERBO,
SANDRA GRONDIN, JoANNE GOUIERE (JANE DOE),
JOHN DOE #'S 6 and 8, ELLEN RAY,
GARY McCAUGHTRY, MARC CLEMENTS,
DEBRA TETZLAFF, CPT. STEVE SCHUELER,
C.O. WATSON, CHAPLAIN FRANCIS,
BYRON BARTOW, KATHLEEN BELLAIRE,
and STEVE SPANBAUER,

Defendants.

ORDER

02-C-473-C

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

Plaintiff Nathaniel Lindell has moved this court to sanction defendants under Fed. R. Civ. P. 11 for their failure to admit certain allegations in plaintiff's complaint that plaintiff asserts defendants know are true. Plaintiff cites four examples of defendants' alleged

misconduct, which I presume are the most egregious examples he could identify. In particular, he states:

1) in response to paragraph 129 of the third amended complaint, plaintiff alleges that he was housed in the Waupun Correctional Institution's segregation unit between September 28, 2000 through January 28, 2001, without his personal religious books, defendants "simply blanket deny all allegations in count XIV;"

2) in response to paragraph 69, where plaintiff alleges "that a statute says something," defendants refuse to admit;

3) in response to paragraph 116, in which plaintiff alleges that "an IMP says something and Casperson approved it," defendants refuse to admit that the IMP says what plaintiff alleges it says or that Casperson approved it; and

4) in response to paragraph 99, in which plaintiff alleged that he filed an inmate complaint about being denied a "tape/c.d. players/records" that was dismissed by some of the defendants, not only did defendants refuse to admit the allegation, but even refused to admit that they dismissed the complaint.

Plaintiff contends that because defendants "refused to admit crucial and irrefutable facts as examplified (sic) above," it is clear that defendants' denials are intended to effect an improper purpose.

When a litigant suspects that the opposing party has violated Rule 11, the litigant is

required to give the opposing party formal notice of the conduct alleged to violate Rule 11 and offer the party an opportunity to withdraw or correct its actions to avoid imposition of sanctions. Fed. R. Civ. P. 11(c)(1)(A); Divane v. Krull Electric Co., Inc., 200 F.3d 1020, 1026 (7th Cir. 1999). Plaintiff does not aver that he served defendant with his motion prior to filing it with the court, together with a letter advising defendant to correct the alleged sanctionable answers and warning him that if he failed to cure the defects, he would file the Rule 11 motion with this court. Thus, plaintiff has not satisfied the notice requirement described in Rule 11(c)(1)(A) and his motion will be denied on that ground.

Plaintiff should take note, however, that even if he were to provide defendants with the notice required by Rule 11, I will not waste this court's limited judicial resources determining the accuracy of his claims that defendants violated Rule 11 with respect to any more of their answers to plaintiff's 191-paragraph complaint. In this court's view, plaintiff's motion for Rule 11 sanctions comes far closer to a filing worthy of Rule 11 sanctions than defendants' answer. This is because a review of the four examples of alleged sanctionable answers plaintiff identified in his motion reveals that plaintiff has completely mischaracterized defendants' responses to the paragraphs he describes.

As noted above, plaintiff asserts that in response to paragraph 129 of the third amended complaint, in which plaintiff alleges that he was housed in the Waupun Correctional Institution's segregation unit between September 28, 2000 through January 28,

2001, without his personal religious books, defendants "simply blanket deny all allegations in count XIV." Plaintiff fails to note that defendants also affirmatively alleged that this court's May 26, 2004 order does not permit plaintiff to proceed on the allegations contained in paragraphs 125-139, and therefore, no response is required.

Plaintiff states that in response to paragraph 69, where he alleges "that a statute says something," defendants refuse to admit. The fact is, defendants affirmatively alleged that the paragraph states a legal conclusion to which no response is required, and that they therefore deny the assertion.

Plaintiff asserts that in response to paragraph 116, where plaintiff alleges that "an IMP says something and Casperson approved it," defendants refuse to admit that the IMP says what plaintiff alleges it says or that Casperson approved it. Plaintiff overlooks the fact that defendants alleged affirmatively that IMP #6A speaks for itself, and that they therefore denied any allegations inconsistent with the document. In addition, defendants noted that they "lacked knowledge or information sufficient to form a belief as to the truth of plaintiff's allegation that Casperson 'approved' IMP#6A," so they denied the allegation for that reason.

Finally plaintiff asserts that in response to paragraph 99, in which plaintiff alleged that he filed an inmate complaint about being denied a "tape/c.d. players/records" that was dismissed by some of the defendants, not only did defendants refuse to admit the allegation, but even refused to admit that they dismissed the complaint. The truth is, defendants

admitted that plaintiff filed inmate complaint no. SMCI-2002-32907 and alleged affirmatively that plaintiff's inmate complaint and the resulting "recommendations-/decisions" speak for themselves. The only denial in response to paragraph 99 is "as to any allegation that is inconsistent with these documents."

Plaintiff asserts that defendants submitted the answers they did for an improper purpose, such as to harass plaintiff, cause unnecessary delay and needlessly increase the cost of litigation in violation of Rule 11(b)(1). However, each of the examples he chose reveals that defendants' answers are entirely proper answers to plaintiff's allegations. If plaintiff is truly concerned about conserving his resources so that he can litigate his many claims in this lawsuit to resolution, he will have to consider more carefully than he did in this instance which matters warrant court intervention and which do not.

ORDER

IT IS ORDERED that plaintiff's motion for Rule 11 sanctions is DENIED.

Entered this 5th day of October, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge