IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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NATHANIEL ALLEN LINDELL,

ORDER

Plaintiff,

02-C-473-C

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.

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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. In particular, plaintiff complains that

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, but that 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 Fed. R. Civ. P. 11(c)(1)(A) and his motion will be denied on that ground. However, I note that even plaintiff had notified defendants' counsel of his objection to defendants' answer, I would not grant plaintiff's motion.

Plaintiff contends that by denying certain of the allegations in his complaint that should be admitted as obvious, he will be forced to "submit hundreds of exhibits to show his allegations are true and defendants involved, costing Lindell unnecessary expense," "prevent Lindell from proving his claims as he is indigent," "harass Lindell and this court with bulky filings that a proper answer would alleviate," and "delay Lindell from moving for temporary or final relief, as he must first gather, discover and prove his facts that defendants know are true." This, plaintiff asserts, is sufficient to show 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 Fed. R. Civ. P. 11(b)(1). 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. It is ludicrous for plaintiff to contend that

defendants' refusal to admit that a statute or an IMP says what it says will affect his ability to prosecute his claims in any way. In addition, although plaintiff is ultimately responsible for proving that he was denied certain publications while he was in segregation, he suggests no reason why defendants' refusal to admit this allegation would make any difference in the final outcome of the claim. The answer is not evidence. Whether defendants admitted or denied plaintiff's allegation in their answer, plaintiff will have the ultimate burden of proving that his constitutional rights were violated. He has personal knowledge about what happened to him while he was in segregation and can testify to those facts.

Similarly, defendants' failure to admit plaintiff's allegation that some of the defendants dismissed his inmate complaint about being denied "tape/c.d. players/records" does nothing to increase plaintiff's costs of litigation, cause delay or harass him. If plaintiff believes one of his constitutional claims requires proof that certain defendants dismissed an inmate complaint, he can introduce an authenticated copy of the administrative documents to prove his point.

I note that 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 which kinds of acts warrant court intervention and which do not. This is a good example of the latter.

ORDER

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

Entered this 27th day of September, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge