

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

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HARRISON FRANKLIN,

Plaintiff,

v.

GARY R. McCAUGHTRY, Warden of
Waupun Correctional Institution, PAULINE
BELGGADO, Doctor of Waupun
Correctional Inst. HSU, BETH
DITHMANN, SGT. SIEDOSCHLAG, JANE
DOE nurse and JOHN DOE nurse,

Defendants.

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ORDER

00-C-157-C

Plaintiff has been granted leave to proceed in forma pauperis in this case on his claim that defendants were deliberately indifferent to his serious medical needs. Although plaintiff did not allege any facts to suggest that defendant Gary McCaughtry personally participated in the alleged deprivation of plaintiff's Eighth Amendment rights, he was allowed to proceed against McCaughtry for the sole purpose of conducting formal discovery to learn the names of the persons he identifies in the caption of his complaint as defendants Jane Doe nurse and John Doe nurse.

On August 22, 2000, the parties participated in a preliminary pretrial conference before United States Magistrate Judge Stephen L. Crocker. At the conference, the magistrate judge set October 6, 2000 as the deadline for filing amended pleadings.

Now plaintiff has moved for an enlargement of time in which to file a proposed amended complaint. In addition, he requests an order directing prison officials to allow him and other prisoners proceeding pro se to receive photocopies of legal documents and case law and better access to the law library, and an order compelling defendants to answer his discovery request.

Plaintiff explains that he needs more time to file a proposed amended pleading because he was transferred to the Supermax Correctional Institution on September 14, 2000 and was separated from his legal materials until September 29, 2000. Also, he contends that his ability to amend his complaint is now being hampered by the following:

- 1) he has limited access to the law library and to his legal materials;
- 2) a lot of his research and legal documents are missing;
- 3) he receives mail from Monday through Thursday only;
- 4) the institution refuses to let him keep photocopies of legal documents or case law pertaining to his case; and
- 5) defendants refuse to disclose discovery he requested.

When the court sets a deadline for filing amended pleadings, it does not intend to suggest that any party is *required* to amend a pleading. As I found in the order granting plaintiff leave to proceed, the allegations of his complaint are sufficient to state a claim that defendants were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. The only shortcoming in the pleading as it presently exists is that plaintiff has identified two defendants for whom he does not have names. He does not need law books, additional time in the law library, research, mail more often than four days a week, photocopies of legal documents or case law to obtain this information. He needs discovery.

Although plaintiff requests an order compelling defendants to respond to his discovery, I note that the request may have been mooted by defendants' response to plaintiff's discovery request, which was filed with the court on September 28, 2000. Presumably, the response was served on plaintiff on that same date.

Defendants object to plaintiff's request for an enlargement of time in which to amend his complaint, noting that if plaintiff's purpose in amending the complaint is to attempt to add defendants and allegations of constitutional wrongdoing relating to transfer to or placement in the Supermax Correctional Institution and unrelated to the subject matter of this lawsuit, the amendment will serve only to lengthen the process and confuse the jury with issues and charges relating to different institutions. Defendants are correct that plaintiff should not spend his

time preparing a proposed amended complaint raising issues that are unrelated to the medical care claim raised in this lawsuit. If plaintiff wishes to raise new issues and sue new defendants related to those issues, he will have to do so in a lawsuit separate from this one. However, insofar as plaintiff's discovery request may have yielded the names of the John and Jane Doe defendants in this lawsuit, he should be permitted to amend the complaint to identify them.

ORDER

IT IS ORDERED that plaintiff's motion for an enlargement of time to file an amended complaint is GRANTED. The October 6, 2000 deadline set in the magistrate judge's preliminary pretrial conference order is EXTENDED to October 27, 2000.

Entered this 18th day of October, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge