

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

MARK R. PETERSEN,

Petitioner,

v.

PHIL KINGSTON or successor,
Warden, Columbia Correctional Institution;
CINDY O'DONNELL or successor,
Deputy Secretary of DOC,,

Respondents.

ORDER

03-C-0443-C

Judgment was entered in this case on August 27, 2003, dismissing this case against all respondents and recording a strike against petitioner. Now petitioner has filed a motion to “for additional fact finding” and to alter or amend the judgment pursuant to Fed. R. Civ. P. 59. In his motion, petitioner insists that I erred in denying his request for leave to proceed in forma pauperis against respondents on a claim that these respondents are violating his Sixth and First Amendment rights by restricting his inability to receive legal advice and assistance from Robert Ciarpaglini, an inmate who is prohibited by order of this court from filing legal papers on behalf of other inmates. Petitioner argues that it was error

to dismiss his case without requiring the respondents to justify the restriction they have imposed. I disagree. I have taken judicial notice of inmate Ciarpaglini's past misconduct in assisting other inmates with legal matters. In the case of Kuruc v. Fiedler, 93-C-324-C, slip op. Dec. 14, 1993, I found that Ciarpaglini had filed papers on behalf of the plaintiff without the plaintiff's knowledge and that Ciarpaglini had signed affidavits with the names of other inmates. Prior to the evidentiary hearing held in the Kuruc case to determine whether Ciarpaglini's conduct was sanctionable, I noted in an order in that case dated November 23, 1993,

In at least three other instances in the past, I have expressed my concern about the kind of legal assistance Mr. Ciarpaglini provides his fellow inmates. In Brewer v. Dotti, 88-C-639-C, I withdrew an order granting the plaintiff leave to proceed in forma pauperis after the plaintiff advised the court that the complaint, which had been drafted by Ciarpaglini, contained exaggerated allegations. In Brownlee v. Oestrich, 89-C-1028-C, Ciarpaglini sought an injunction prohibiting the defendants from keeping legal materials relating to Brownlee's case that had been confiscated from Ciarpaglini's cell on the ground, among others, that the plaintiff, who allegedly could not read, required Ciarpaglini's assistance. In that case, it appeared that the plaintiff had unwittingly relinquished all of his papers concerning his case to Ciarpaglini, and that Ciarpaglini was representing plaintiff in the case despite the fact that he and the plaintiff could not meet physically to discuss plaintiff's case. Later, after counsel was appointed to represent the plaintiff, counsel moved to withdraw when, according to counsel, "the circumstances upon which the court based its decision to grant plaintiff's request for appointed counsel were not as claimed." In Young v. Schardt, 90-C-719, I found suspicious an averment in plaintiff Sexton's affidavit, which was written in Ciarpaglini's hand, to the effect that Sexton could not read "print." In that case, Sexton had also averred that he had a ninth grade education, and he had signed his affidavit in cursive writing.

I am not persuaded that I erred by denying petitioner leave to proceed with his claim without requiring respondents to articulate the justification for their decision to prohibit inmates from seeking legal assistance from Ciarpaglini, in light of the fact that this court already has found that Ciarpaglini has a past history of predatory “assistance” and that respondents are undoubtedly aware of that finding.

ORDER

IT IS ORDERED that petitioner’s motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59 is DENIED.

Entered this 23rd day of September, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge