IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- -

DANE MARCUS BONNER,

ORDER

Petitioner,

03-C-662-C

v.

ST. CROIX COUNTY JAIL; and
ST. CROIX COUNTY ADMINISTRATION,

Respondents.

- -

This is a proposed civil action for monetary and injunctive relief, brought under 42 U.S.C. § 1983. Petitioner, who is presently confined at the St. Croix County Jail in Hudson, Wisconsin, asks for leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. From the financial affidavit petitioner has given the court, I conclude that petitioner is unable to prepay the full fees and costs of starting this lawsuit.

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. See Haines v. Kerner, 404 U.S. 519, 521 (1972). However, if the litigant is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave to proceed if the prisoner has had three or more lawsuits or appeals dismissed for lack

of legal merit (except under specific circumstances that do not exist here), or if the prisoner's complaint is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. This court will not dismiss petitioner's case on its own motion for lack of administrative exhaustion, but if respondents believe that petitioner has not exhausted the remedies available to him as required by § 1997e(a), they may allege his lack of exhaustion as an affirmative defense and argue it on a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). See Massey v. Helman, 196 F.3d 727 (7th Cir. 1999); see also Perez v. Wisconsin Dept. of Corrections, 182 F.3d 532 (7th Cir. 1999).

In his complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

Petitioner is an inmate at the St. Croix County Jail. The jail enforces a policy that prevents him from obtaining a razor for shaving unless he must appear in front of a jury. Otherwise, inmates who wish to remove facial hair must use Nair. The manufacturer of Nair does not recommend using its product for the purpose of removing facial hair.

As a result of the jail's policy and his use of Nair to remove his facial hair, petitioner has suffered facial scarring and burning. Other inmates have suffered up to third degree facial burns. Petitioner does not receive direct sunlight or fresh air at the jail, which increases

his skin sensitivity.

DISCUSSION

There is at least one problem with petitioner's proposed complaint. Petitioner has sued the "St. Croix County Jail" and the "St. Croix County Administration." As a physical structure, the "jail" cannot be sued. According to Fed. R. Civ. P. 17(b), state law determines whether an entity has the capacity to sue or be sued. Wis. Stat. § 302.30-37 governs jails and does not authorize jails to sue or be sued. See Grow v. City of Milwaukee, 84 F. Supp. 990, 997 (E.D. Wis. 2000) (abrogated on other grounds by Driebel v. City of Milwaukee, 298 F.3d 622 (7th Cir. 2002)) (finding that Wis. Stat. § 62.50 does not authorize police departments to sue or be sued and therefore City of Milwaukee Police Department was not suable entity). The St. Croix County Jail is incapable of accepting service of plaintiff's complaint or responding to it.

With respect to proposed respondent "St. Croix County Administration," I understand petitioner to be suing St. Croix County. The county is a suable entity. Wis. Stat. § 59.01. Ordinarily, the sheriff of a county is responsible for a county jail's policies and practices, but petitioner has not sued the county sheriff. In some instances, however, a sheriff's acts may be construed as establishing municipal policy or custom. Pembaur v. Cincinnati, 475 U.S. 469, 479-80 (1986); Zook v. Brown, 865 F.2d 887, 895 (7th Cir.

1989)(sheriff's act of disciplining employee constituted county policy). If "the decision maker possesses final authority to establish municipal policy with respect to the action ordered, his or her act is the equivalent of the municipality's." Id. at 481. Therefore, petitioner's complaint may be properly aimed at the respondent county.

In analyzing the allegations of petitioner's complaint, I am forced to speculate about the facts. Petitioner does not provide any detail about what respondent's allegedly offending policy says or how it is being implemented. In particular, he does not allege whether jail officials refuse inmates razors and make Nair available at the prison canteen or in bottles clearly marked with the manufacturer's directions for use and cautions against use. If this is the case, petitioner would not state an Eighth Amendment claim. He has no constitutional right to a razor and he is free to decline to use the hair removal product offered at the jail. However, if jail officials are doling out unmarked containers of a Nair product not intended for use on the face (there are Nair products made specifically for facial hair removal) and are requiring inmates to use the product to remove facial hair knowing such use risks serious harm, then petitioner's allegations would make out a claim of constitutional proportion.

In the Seventh Circuit a complaint does not need to contain "all of the facts that will be necessary to prevail." Hoskins v. Poelstra, 320 F.3d 761, 764 (7th Cir. 2003). A petitioner is allowed to describe his claim "briefly and simply." Fed. R. Civ. P. 8; Shah v.

Inter-Continental Hotel Chicago Operating Corp., 314 F.3d 278, 282 (7th Cir. 2002); see also Walker v. Thompson, 288 F.3d 1005, 1007 (7th Cir. 2002) ("[T]here is no requirement in federal suits of pleading the facts or the elements of a claim."). So long as the complaint gives the respondent sufficient notice of the claim to file an answer, it "cannot be dismissed on the ground that it is conclusory or fails to allege facts." Higgs v. Carver, 286 F.3d 437, 439 (7th Cir. 2002).

Petitioner's complaint gives respondent notice of his claim. Thus, I am constrained by Seventh Circuit law to allow petitioner to proceed against the respondent county without requiring petitioner to clarify at this early stage the facts upon which he bases his claim.

ORDER

IT IS ORDERED that petitioner Dane Marcus Bonner's request for leave to proceed in forma pauperis is GRANTED on his claim against respondent St. Croix County that the county is enforcing a policy that subjects petitioner to a substantial risk of serious harm.

IT IS ORDERED further that petitioner Dane Marcus Bonner's request for leave to proceed in forma pauperis is DENIED on his claim against respondent St. Croix County Jail and this respondent is DISMISSED from this case.

- For the remainder of this lawsuit, petitioner must send respondent a copy of every paper or document that he files with the court. Once petitioner has learned what

lawyer will be representing respondent, he should serve the lawyer directly rather than respondent. The court will disregard any documents submitted by petitioner unless petitioner shows on the court's copy that he has sent a copy to respondent or to respondent's attorney.

- Petitioner should keep a copy of all documents for his own files. If petitioner does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.
- The unpaid balance of petitioner's filing fee is $150.00; petitioner is obligated to pay this amount in monthly payments as described in 28 U.S.C. § 1915(b)(2).

Entered this 11th day of December, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge