

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

JONATHAN P. COLE,

Plaintiff,

v.

JON E. LITSCHER;
MICHAEL CATALANO;
PRISON HEALTH SERVICES, INC.;
PAM BARTELS;
JOHN W. KUSSMAUL; D. ESSER;
FUERSTENBURG; JANTZEN;
TIM F. HAINES; SHIRLEY OLSON;
KERRY MELBY; BECKY MANNING;
and GERALD A. BERGE,

Defendants.

ORDER

04-C-116-C

In an untitled document dated November 22, 2004 (Dkt. #67), plaintiff Jonathan P. Cole formally withdrew his motion for voluntary dismissal of this case. In separate documents, he asks for an enlargement of time in which to oppose defendants' motion for summary judgment (Dkt. #68) and moves for an order directing defendants to correct the caption of documents they submit in this case to show the middle initial in his name (Dkt. #69).

In support of his motion for an enlargement of time to oppose defendants' motion for summary judgment, plaintiff states that he has limited access to the law library and needs more time to "refute the case law," "review the Federal Rules of Civil Procedure or Federal Rules of Evidence to understand how to file or follow the procedures." However, this court is well-versed in the law that governs claims of unconstitutional conditions of confinement in prisons. It is not necessary for plaintiff to focus his attention on legal argument. Rather, if he is going to survive defendants' motion for summary judgment, he will have to respond to defendants' proposed findings of fact with factual statements of his own that are supported with admissible evidence in the record and that successfully put into dispute facts that are necessary to a determination whether plaintiff's constitutional rights have been violated. Plaintiff was provided a copy of this court's Procedures to be Followed on Motions for Summary Judgment at the time the court established a schedule for briefing the motion. In the event plaintiff has misplaced his copy of the procedures, I am enclosing another copy to him with this order. It is these procedures that plaintiff must follow in responding to defendants' motion. Plaintiff should note that the types of materials that constitute admissible evidence are listed in the procedures at ¶ I.C.1. In addition, in a memorandum regarding summary judgment motions, this court explained common mistakes pro se litigants make in responding to a motion for summary judgment and how to avoid those mistakes. Although plaintiff should already have a copy of this memorandum in his possession, I am

including another copy to him with this order.

In summary, although plaintiff has shown no persuasive reason why he needs an enlargement of time in which to respond to defendants' motion for summary judgment, I will grant him a short extension of time to January 14, 2005, in which to oppose the motion.

In support of his motion for an order directing the defendants to show plaintiff's middle initial in the caption of their submissions in this case, plaintiff states that defendants have dropped his middle initial from their filings, which he takes as a showing of disrespect. Although I suspect that the omission of plaintiff's middle initial is a clerical problem and not an intentional showing of disrespect, it is this court's practice to require that the caption of a lawsuit reflect precisely the caption of the operative pleading in the case. In this case, plaintiff used his middle initial in listing his name in the caption of his complaint. Therefore, defendants should show plaintiff's middle initial in the caption of their submissions in this case.

ORDER

IT IS ORDERED that plaintiff may have an enlargement of time to January 14, 2005, in which to oppose the motion for summary judgment of defendants Litscher, Kussmaul, Esser, Jantzen, Fuerstenberg, Berge & Haines. Defendants may have until January 28, 2005, in which to serve and file a reply.

Further, defendants are requested to amend the caption of future submissions in this case to reflect plaintiff's name precisely as he shows it in the caption of the complaint.

Entered this 13th day of December, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge