

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

AUSTIN C. SZYMANKIEWICZ,

Plaintiff,

v.

DAVID PICARD, CONRAD REEDY,
HAYLEY HERMANN, DAVID TARR,
MIKE DITTMAN and DENICE DOYING,

Defendants.

ORDER

04-C-186-C

In an order entered in this case on May 3, 2004, I granted plaintiff leave to proceed in forma pauperis on his claims that each of the defendants retaliated against him for exercising his First Amendment right to file inmate complaints. Now plaintiff has filed a motion for a temporary restraining order or preliminary injunction in which he seeks an order preventing his transfer from the Kettle Moraine Correctional Institution to the New Lisbon Correctional Institution because the decision to transfer has been made in retaliation for plaintiff's having filed this lawsuit. Plaintiff's motion will be denied.

Plaintiff's new claim of retaliation cannot be brought in the context of this lawsuit. In situations in which a plaintiff alleges that state officials have retaliated against him for

initiating a lawsuit, it is the policy of this court to require the claim to be presented in a lawsuit separate from the one which is alleged to have provoked the retaliation. This is to avoid the complication of issues which can result from an accumulation of claims in one action.

The court recognizes an exception to this policy only where it appears that the alleged retaliation would directly, physically impair the plaintiff's ability to prosecute his lawsuit. In this case, plaintiff suggests that because he believes the New Lisbon Correctional Institution does not have a law library, he will be impeded in his ability to prosecute this action. However, there is no need for plaintiff to obtain legal authority to support the claims of retaliation alleged in his complaint beyond that already discussed in the order allowing him to proceed. In order to succeed on his claims, he will have to put in evidence to show that defendants' acts were indeed retaliatory for his exercise of his right to file inmate complaints. Whether plaintiff is in Kettle Moraine or New Lisbon, he has personal knowledge of the events giving rise to his claims and he can conduct discovery to obtain additional facts if they exist. Nothing about his transfer should physically impair his ability to prosecute this lawsuit.

ORDER

IT IS ORDERED that plaintiff's motion for a temporary restraining order or for a

preliminary injunction is DENIED.

Entered this 20th day of May, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge