

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

NATHANIEL ALLEN LINDELL,

Plaintiff,

v.

ORDER

05-C-04-C

CINDY O'DONNELL, RICK RAEMISCH,
SANDRA HAUTAMAKI, JOHN RAY,
STEVEN CASPERSON, JEFF HAEN,
STEVEN SPANBAUER, KATHLEEN BELLAIRE,
CAPT. KURT LINJER, C.O. DEAVER, ELLEN RAY,
CAPT. GILBERG, PETER HUIBREGTSE, GERALD
BERGE, RICHARD SCHNEITER,
SGT. S. GRONDIN, BRIAN KOOL, C.O. D. ESSER,
C.O. A. JONES, GARY BOUGHTON, JOHN SHARPE,
KELLY TRUMM, C.O. JOHNSON, TIMOTHY HAINES,
LT. J. GRONDIN, C.O. BELL, SGT. BARTELS,
LT. BRUDAS, CPT. JULIE BIGGAR,
C.O. SCHNEIDER, and C.O. KORTMANN,

Defendants.

This is a civil action brought pursuant to 42 U.S.C. § 1983. Plaintiff Nathaniel Allen Lindell, an inmate at Wisconsin Secure Program Facility in Boscobel, Wisconsin, contends that defendants have violated his constitutional rights under the First, Eighth and Fourteenth Amendments. In July 2004, plaintiff filed this civil action in the Eastern District

of Wisconsin. On November 2, 2004, the Hon. J.P. Stadtmueller granted plaintiff leave to proceed in forma pauperis on all of the claims raised in plaintiff's complaint and directed the Marshal to serve the complaint on the defendants. Subsequently, on December 30, 2004, Judge Stadtmueller granted defendants' motion to transfer the case to this court.

On June 24, 2005, defendants filed a motion for summary judgment contending, among other things, that plaintiff failed to exhaust his administrative remedies on a number of claims prior to bringing suit, as is required by 42 U.S.C. § 1997e(a). That motion has been fully briefed. However, in reviewing the motion, I find that the record is incomplete. I cannot determine whether plaintiff exhausted his administrative remedies with respect to his claims that defendants issued him four false conduct reports in retaliation for his threats to file grievances and lawsuits, refusal to consent to destruction of his confiscated personal property, and postage of a letter criticizing prison staff without examining the records of his disciplinary proceedings. Wis. Admin. Code § DOC 303.76.

Therefore, before I issue a ruling on defendants' motion for summary judgment, I will give the parties an opportunity to present all evidentiary materials pertinent to the question of exhaustion. It should be a simple matter to determine from the parties' submissions whether plaintiff gave defendants fair warning of his claims so as to allow prison officials an opportunity to resolve them without judicial intervention. Perez v. Wisconsin Dept. of Corrections, 182 F.3d 532, 537-38 (7th Cir. 1999) (purpose of exhaustion to narrow dispute

and avoid litigation).

ORDER

IT IS ORDERED that the parties may have until October 13, 2005, to serve and file any additional evidentiary materials relevant to the question whether plaintiff exhausted his administrative remedies on his claims of retaliation.

Entered this 28th day of September, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge