

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

SHAROME ANDRE POWELL,

Plaintiff,

v.

PHIL KINGSTON and
TIM DOUMA,

Defendants.

ORDER

05-C-112-C

Plaintiff has filed a motion to substitute Gregory Grams, the new warden at the Columbia Correctional Institution, for defendant Phil Kingston, the former warden at Columbia, and to substitute “Humphreys,” the new security director, for former security director defendant Tim Douma. The motion will be denied.

Plaintiff Powell is proceeding on a claim that on two separate occasions he was placed on a “bag meal restriction” that was nutritionally inadequate, in violation of his Eighth Amendment rights. On May 3, 2005, defendants moved to dismiss plaintiff’s complaint on the ground that he failed to exhaust his administrative remedies. That motion is presently under advisement. Even if the case were not ready for decision on a motion that may

dispose of the entire case, plaintiff's request for substitution is inappropriate under the circumstances.

Fed. R. Civ. P. 25(d) provides:

When a public officer is a party to an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party. . . .

Ordinarily, a plaintiff sues a state official in his official capacity when he is seeking injunctive or declaratory relief from the official's enforcement of a policy or custom believed to be unlawful. See, e.g., Kentucky v. Graham, 473 U.S. 159, 165 (1985). If the plaintiff seeks money damages from a state official, however, the suit must be brought against the official in his individual capacity. This is because a suit for money damages brought against a defendant in his official capacity only is really a suit for money damages against the state that is barred by the Eleventh Amendment. Shockley v. Jones, 823 F.2d 1068, 1070 (7th Cir. 1987)("A suit for damages against a state official in his or her official capacity is a suit against the state for Eleventh Amendment purposes.").

In his complaint, plaintiff seeks monetary relief. Because plaintiff seeks money damages from the defendants, they must remain parties to this lawsuit.

ORDER

IT IS ORDERED that plaintiff's motion to substitute Gregory Grams for defendant Phil Kingston and "Humphreys" for defendant Tim Douma is DENIED.

Entered this 1st day of June, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge