

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

TITUS HENDERSON,

Plaintiff,

v.

BRIAN KOOL,

Defendant.

ORDER

05-C-157-C

On April 25, 2005, I allowed plaintiff to proceed in forma pauperis on his claim that defendant Brian Kool denied him a promotion to security level three in retaliation for plaintiff's statement that he had been transferred to the Wisconsin Secure Program Facility because he had sued Redgranite Correctional Institution. I denied plaintiff leave to proceed on five other claims and dismissed from the complaint defendants Peter Huibregtse, Burton Cox, Jeffrey Endicott, Matthew Frank, Steve Casperson, Cindy Sawinski, Amy Campbell and Judith Huibregtse. Assistant Attorney General Ma Manee Moua has filed a notice of appearance on behalf of defendant Kool, but has not yet filed an answer to plaintiff's complaint. Now plaintiff has filed a proposed amended complaint. From his cover letter, it appears that plaintiff believes his amendment is as of right. Unfortunately, every

complaint or amended complaint filed by a prisoner must be screened on its merits under 28 U.S.C. § 1915 or § 1915A. Before I will screen plaintiff's amended complaint, however, he will have to make it clear what changes he is attempting to make to the complaint.

A cursory review of the amended complaint reveals that plaintiff is attempting to reallege his claims against Peter Huibregtse, Burton Cox, Matthew Frank, Amy Campbell, Cindy Sawinski and Judith Huibregtse, despite the fact that I found plaintiff's allegations against them in his original complaint insufficient to state a claim for federal relief. Plaintiff also appears to be adding a new claim of constitutional wrongdoing against a proposed new defendant, a CO II J. Starky.

It is an inefficient use of the court's time to screen in an amended complaint claims that were screened in the original complaint and found to lack legal merit. Nor is it proper to attempt to raise entirely new claims against new defendants in an amended complaint. Therefore, I will not permit plaintiff to proceed on his amended complaint at this time. If plaintiff believes that he can make out a claim for relief against former defendants Peter Huibregtse, Burton Cox, Matthew Frank, Amy Campbell, Cindy Sawinski and Judith Huibregtse by adding certain factual allegations against them, then he will have to make it clear to this court what additional factual allegations he is asserting. Therefore, I will require plaintiff to rewrite his proposed amended complaint so that it is identical to the original complaint, except that plaintiff is to draw a line through the allegations that he no longer

wishes the court to consider and is to highlight all new allegations that he is adding to the complaint. In other words, it must be very clear to the court which allegations are new and which ones are old, as well as which ones plaintiff is dropping. Plaintiff is not to add new allegations that have nothing to do with those made in his previous complaint. If plaintiff believes that C.O. II Starky violated his constitutional rights by confiscating his outgoing mail in March of this year, he is free to raise this claim in a lawsuit separate from this action. To the extent that plaintiff may be attempting to allege that Starky violated the Wisconsin Administrative Code by failing to issue notices of non-delivery, plaintiff should consider whether his claim might be more appropriately brought in state court.

ORDER

IT IS ORDERED that plaintiff's motion to amend his complaint is DENIED without prejudice to his refiling his motion with a proposed amended complaint in the form described in this order.

Entered this 6th day of June, 2005.

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