

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

WILLIE C. SIMPSON,

Plaintiff,

v.

JANEL NICKEL, TIMOTHY DOUMA,
PHILIP KINGSTON, WILLIAM
NOLAND, MATTHEW J. FRANK,

Defendants.

ORDER

05-C-232-C

Plaintiff has been allowed to proceed in this action on his claim that defendants Janel Nickel, Timothy Douma, Philip Kingston, William Noland and Matthew Frank violated his First Amendment rights by retaliating against him in early 2004 for filing a complaint about an sexual assault perpetrated by a guard against an inmate. Defendants have moved to dismiss plaintiff's complaint on the ground that plaintiff failed to exhaust his administrative remedies before bringing suit. That motion is presently being briefed. Now plaintiff has filed a "Motion for Order Compelling Warden Qualla Champagne [to] Give the Plaintiff Access to Case Law, Legal Books, Notarization, Staples to Bind Motions and Briefs and Access to the Seg Law Library in Order to Access the Court." I construe plaintiff's motion

as a motion for a preliminary injunction enjoining prison officials from denying him access to the court.

Plaintiff's claim that he is being denied his right of access to the courts cannot be brought in the context of this lawsuit. In situations in which a plaintiff alleges that state officials are interfering with his right of access to the courts in connection with an existing lawsuit, it is the policy of this court to require the claim to be presented in a separate lawsuit with one exception. Where it appears that the alleged interference would directly, physically impair the plaintiff's ability to prosecute his lawsuit, the court will allow the parties to be heard on the matter. In support of his motion, plaintiff states that his requests to go to the segregation law library and for "legal case law, legal books and forms," a stapler and notarization of affidavits have been denied. However, plaintiff has made no showing that his ability to prosecute this lawsuit has been impeded by these temporary restrictions. This court does not require submissions to be stapled and plaintiff already has filed his brief in opposition to defendants' motion to dismiss. Even if the case survives defendants' motion to dismiss, plaintiff has no need for notary services. In federal court, affidavits will be admissible in evidence if they contain the signature and seal of a notary public that is provided upon the signing of the document, or if the signer makes a declaration at the completion of his affidavit that includes the following statement followed by a signature: "I declare under penalty of perjury under the laws of the United States of America that the

foregoing is true and correct. Executed on (date) ." See 28 U.S.C. §1746.

Finally, plaintiff does not explain how his inability to go to the segregation law library or obtain legal books physically impairs his ability to prosecute his lawsuit. This case is about a single incident of retaliation occurring in 2004. The law relating to plaintiff's claim was described in the court's May 18, 2005, order allowing plaintiff leave to proceed. Plaintiff should not need to visit a law library to obtain more legal precedent. His focus at this stage should first be on obtaining proof of exhaustion of his administrative remedies. If his case survives defendants' motion to dismiss, his focus should be to gather evidence to prove his claim. His need for additional case law is unnecessary.

ORDER

IT IS ORDERED that plaintiff's motion for an order enjoining defendants preliminarily from denying him access to the courts is DENIED.

Entered this 16th day of August, 2005.

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