IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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KURT W. MEYER,

Plaintiff,

v.

MARK TESLIK,

Defendant.

MEMORANDUM

05-C-269-C

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Plaintiff is proceeding in forma pauperis in this action on a claim that defendant Teslik denied plaintiff his right to practice his Native American religion between June 26, 2004 and October 1, 2004. On June 29, 2005, defendant filed an answer in which he asserted a number of affirmative defenses. Now plaintiff has filed a document titled "Response Answer to Affirmative Defenses of Mark Teslik."

Fed. R. Civ. P. 12(b) permits defendants to avoid litigation of a case if plaintiff's allegations of fact, even if accepted as true, would be insufficient to make out a legal claim against them. Although defendant Teslik raised certain affirmative defenses in his answer, he has not filed a motion to dismiss. If such a motion were to be filed, plaintiff would be allowed to respond to it. Otherwise, it is not necessary for plaintiff to respond to

defendant's answer. Indeed, Fed. R. Civ. P. 7(a) forbids a plaintiff to submit a reply to an answer unless the court directs a reply to be filed. No such order has been made in this case. Plaintiff should be aware, however, that he is not prejudiced by Rule 7(a). Fed. R. Civ. P. 8(d) provides averments in pleadings to which a response is not allowed are assumed to be denied. Therefore, although plaintiff is not permitted to respond to defendant's answer, the court assumes that he has denied the factual statements and affirmative defenses raised in that answer.

ORDER

IT IS ORDERED that plaintiff's reply to the answer will be placed in the court's file but will not be considered.

Entered this 8th day of September, 2005.

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