

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

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JONATHON M. MARK,

Plaintiff,

v.

Off. GUSTAFSON; Sgt. McARTHUR;  
Lt. DOHMS; Unit Manager DOUGHERTY;  
Mr. BROWN (head of PRC); and STEVEN M. PUCKETT;

Defendants.  
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ORDER

05-C-279-C

In July 2005, I screened plaintiff's complaint, dismissing the claims that were legally meritless and granting plaintiff leave to proceed with respect to the remainder of his claims. Subsequently, on November 28, 2005, I granted the motion of defendants Off. Imberg, Capt. Hanson, Capt. Schultz, Chaplain Olson and Sgt. Meshum to dismiss plaintiff's claims against them after finding that plaintiff had failed exhaust his administrative remedies.<sup>1</sup> In addition, I dismissed defendants Unit Psychologist (Melrose - Jane Doe) and Unit

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<sup>1</sup>Inadvertently, I failed to state expressly at the end of the November 28 opinion and order that because no claims remain against defendant Meshun, he is no longer a party to this lawsuit. I will make that explicit in the order.

Psychologist (Oxbow - John Doe) on the court's own motion for plaintiff's failure to prosecute the case against these defendants. The only claims remaining to be resolved are plaintiff's claims that 1) defendants Gustaffson and McArthur interfered with plaintiff's ability to practice his religion when they "destroyed" his magic seals; and 2) defendants Dohms, Dougherty, Brown and Puckett conspired to violate plaintiff's right of access to courts by transferring him to a correctional institution that lacked the legal resources he needed to initiate this lawsuit and to pursue his motion for post-conviction relief. Now plaintiff has filed a letter dated December 2, 2005, in which he states that he intends to appeal the rulings adverse to him in the July and November 28 orders. He asks for forms and any information the court can provide regarding such an appeal. In addition, plaintiff suggests that "to save time," the court schedule a "dispositional or evidentiary hearing or a jury trial against defendant Dougherty," and order defendants to "produce the names of the inmates who saw [the program review committee] on May 1, 2003.

Although plaintiff is free to appeal this court's decisions to dismiss certain claims and certain defendants from the case in advance of trial, he should consider delaying such an appeal until the remaining claims in his case are resolved. This way, he will not be required to pay more than one filing fee for an appeal. If, however, plaintiff wishes to seek permission to appeal before final judgment is entered in this case, he will have to move the court for alteration of the July and November orders to include a finding that the orders are

appealable under 28 U.S.C. § 1292. I express no opinion at this time whether such a motion would be granted.

Plaintiff's request that the court schedule an evidentiary hearing or jury trial to decide his claim against defendant Dougherty will be denied. In a preliminary pretrial conference order dated September 28, 2005, Magistrate Judge Crocker set deadlines for the parties to file dispositive motions and scheduled a June 19, 2006 trial date for any claims that are not subject to resolution by way of a dispositive motion. Plaintiff's suggests no reason why his claim against defendant Dougherty should be tried earlier than his other claims or why an evidentiary hearing is necessary.

Finally, plaintiff asks that the court compel defendants to produce the names of inmates who saw the program review committee on May 1, 2003. A motion to compel is not proper unless plaintiff can show that he served defendants with interrogatories seeking the information he wants compelled and that the defendants failed to respond to his request within the time allowed under the Federal Rules of Civil Procedure (normally, 30 days from the date of service of requests for interrogatories or for production of documents). Plaintiff has made no showing that he has made proper discovery requests of defendants pursuant to Fed. R. Civ. P. 33 or 34 and that defendants have failed to respond to his requests. Therefore, his motion to compel will be denied as premature.

ORDER

IT IS ORDERED that

1. Plaintiff's motion that the court schedule an evidentiary hearing or separate jury trial to decide his claim against defendant Dougherty is DENIED.

2. Plaintiff's motion to compel defendants to provide him with the names of inmates who saw the program review committee on May 1, 2003, is DENIED as premature.

3. Defendant Sergeant Meshum is no longer a party to this lawsuit.

Entered this 12th day of December, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge