IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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TROY FROISETH,

ORDER

Plaintiff,

05-C-470-C

v.

COUNTY OF LA CROSSE, WISCONSIN;
MIKE WEISSENBERGER; MARK WELANDER;
JAMES GEORGIEFF; TANYA DELAP; and
HEALTH PROFESSIONALS, LTD.,

Defendants.

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This is a civil action under 42 U.S.C. § 1983 and Wisconsin law in which plaintiff Troy Froiseth alleges that various officials at the La Crosse County jail violated his constitutional rights by failing to prevent two inmates from attacking him in April 2004. Also, plaintiff challenges the medical care he received after the attack. Presently before the court are three motions: (1) a motion for summary judgment filed by defendants County of La Crosse, Weissenberger, Welander, Georgieff and Delap; (2) a motion to strike plaintiff's expert witness; and (3) defendant Health Professionals' motion for summary judgment. However, I am unable to rule on the motions at this time because of a number of problems

with the parties' proposed findings of fact. Therefore, I will give the parties a short amount of time to submit new proposed findings that adhere strictly to the guidelines in this order and to the court's summary judgment procedures.

Because of the nature of the claims plaintiff raises in this case, the critical facts will be what the individual defendants knew before plaintiff was assaulted, what plaintiff told defendants before the assault, what actions defendants took before the assault and what medical care plaintiff received after the assault. The parties should keep this in mind as I discuss the problems with their proposed findings.

The most common problem is the language used by the parties at the start of their proposed findings. Many proposed findings begin with the words "according to," "he indicated that," "he testified that," "he admitted that," etc. For example, one of defendants' proposed findings reads as follows:

> Mr. Froiseth testified that when he interjected into the argument, Jessie Reid looked at him and told him that he better turn his head, walk away, and not say anything otherwise, the same thing would happen to him.

What a person admitted, indicated or testified to at his deposition is not relevant to the claims in this case. What happened in the jail before and after plaintiff was assaulted is relevant. The correct way to state the proposed finding would be as follows:

> When Froiseth interjected into the argument, Jessie Reid looked at him and told him that he better turn his head, walk away, and not say anything otherwise, the same thing would happen to him.

Because many of the proposed findings are phrased in terms of what a party admitted, indicated, acknowledged or testified to, it is not clear how to interpret some of the responses to these proposed findings. For example, defendants County of La Crosse, Weissenberger, Welander, Georgieff and Delap propose as finding of fact #42 that "Mr. Froiseth testified that he addressed it to the sheriff because he wanted the request to go to the 'proper authority.'" In response, plaintiff writes "Admit." To what is plaintiff admitting? Is he admitting that the statement is his testimony? Or is he agreeing with the underlying substance of the proposed finding, that plaintiff addressed the note to the sheriff? In submitting new proposed findings of fact, the parties should not phrase them in terms of what a party or witness admitted or testified to at his deposition.

In addition, the parties should keep in mind the following in drafting new proposed findings. First, each proposed finding should be followed by a citation to specific evidence in the record that supports the proposal. Several of the proposed findings submitted by the parties have no citations to evidence or have citations to "Record." Neither of these is acceptable. Second, proposed findings about the procedural posture of the case or about what plaintiff alleged in his complaint are unnecessary and irrelevant to a decision on motions for summary judgment. Third, legal conclusions should not be made the subject of proposed findings. Finally, to properly dispute a proposed finding, the responding party must state an alternate version of the proposed finding and cite evidence supporting that

version. Merely stating "dispute" and providing a citation in the record is not sufficient.

Because I am giving the parties another chance to submit proposed findings, I will not hesitate to ignore proposals that do not adhere to the terms of this order or this court's summary judgment procedures, copies of which were attached to the preliminary pre-trial conference order. The Court of Appeals for the Seventh Circuit has stated repeatedly that district courts are entitled to expect and demand strict compliance with local rules governing summary judgment. Metropolitan Life Ins. Co. v. Johnson, 297 F.3d 558, 562 (7th Cir. 2002).

ORDER

IT IS ORDERED that defendants may have until April 11, 2006 in which to submit new proposed findings of fact in support of their motions for summary judgment. Plaintiff may have until April 17, 2006 in which to submit responses to defendants' proposed findings and any additional proposed findings. Defendants may have until April 21, 2006 in which to submit replies to plaintiff's responses and responses to any additional findings

proposed by plaintiff.

Entered this 4th day of April, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge