

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

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CLAYTON HARDY MELLENDER,

Plaintiff,

v.

DANE COUNTY and DR. JOHN DOE,

Defendants.

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ORDER

06-C-298-C

In this civil action, plaintiff is proceeding on a claim that defendants exhibited deliberate indifference to his serious medical needs by discontinuing his methadone prescription and enforcing a policy that restricts inmates from receiving prescription methadone. The parties are presently briefing defendants' motion for summary judgment on the question whether plaintiff exhausted administrative remedies available to him at the Dane County jail. Now plaintiff has filed a "motion to suppress and/or strike" the affidavit of Sgt. Craig Vander Molen, who avers at paragraph 2 that there is a formal grievance procedure in place at the Dane County jail that allows prisoners to submit written complaints concerning their health and welfare and that the procedure has been in place for a period of time "that includes the period of time referenced in [plaintiff's] complaint." A

copy of a grievance procedure dated April 20, 2006, is attached to Vander Molen's affidavit as "Exhibit C." In paragraph 5 of his affidavit, Vander Molen describes this exhibit as "a copy of Section 607.07 of the Security Services Manual, which explains the Formal Grievance System that is in place at the Dane County Jail."

In support of his motion to suppress or strike, plaintiff points out in an unsworn "memorandum" that he was incarcerated at the Dane County jail in March 2006, three weeks earlier than the date on the formal grievance procedure defendants have submitted as Exhibit C. In plaintiff's view, the exhibit is misleading because it appears to have been intended as evidence to support Vander Molen's averment that a grievance procedure was in place at the time of plaintiff's incarceration at the jail in March 2006.

Defendants do not propose any fact in support of their motion for summary judgment that relies on paragraph 5 of the Vander Molen affidavit and the cited Exhibit C. Therefore, there is no reason for this court to consider Exhibit C when it decides the motion for summary judgment. Defendants do propose as a fact at paragraph 4 of their "Proposed Findings of Fact" that "[t]here is a grievance procedure in place at the Dane County Jail which allows prisoners to submit written complaints concerning their health and welfare, as well as the operations, conditions and services in the jail," but they cite plaintiff's complaint and the Vander Molen affidavit at paragraph 2 (which does not refer to Exhibit C) as evidence to support this proposed fact.

If plaintiff believes that defendants' proposed finding of fact no. 4 is false, that is, that a grievance procedure did not exist at the jail at the time of his incarceration there, he is free to attempt to put the fact into dispute. He can do this by stating his version of the fact in his response to defendants' proposed finding of fact no. 4 and supporting his version with evidence, such as his affidavit or the affidavit of someone else having personal knowledge of the existence or lack of existence of a grievance procedure at the jail during the time he was incarcerated there. There is no basis for striking the Vander Molen affidavit or Exhibit C to that affidavit.

ORDER

IT IS ORDERED that plaintiff's "Motion to Suppress and/or Strike Affidavit of Sgt. Craig Vander Molen" is DENIED.

Entered this 4th day of October, 2006.

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