

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

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JAMES G. DUDGEON,

Plaintiff,

v.

JOHN FIORELLO

Defendant.

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ORDER

06-C-563-C

In an order dated December 7, 2006, I granted plaintiff James G. Dudgeon leave to proceed in this action on his claim that defendant John Fiorello failed to hold a preliminary hearing with an impartial third party after plaintiff's parole was revoked. I denied plaintiff's request for leave to proceed against Matthew J. Frank, because it appeared that plaintiff was suing him under the theory of *respondeat superior*, which is not permitted in civil actions such as this brought under 42 U.S.C. § 1983. Although I explained in the body of the order why plaintiff would not be allowed to proceed against Frank, I did not state expressly in the "order" section of the opinion that I was dismissing Frank from the lawsuit. To clarify the record, I will amend the December 7 order to include a statement expressly dismissing Frank.

Second, it has come to my attention that at the time plaintiff filed his complaint, he also filed a document titled "Plaintiff Motion for Discovery" (Dkt. #3). In this "motion,"

plaintiff does not request any court action. Instead, it is directed to the defendant and seeks production of documents.

Requests for production of documents should be served directly on the defendants or the defendants' lawyer, once the name of the lawyer is known. In this case, there is no indication that plaintiff served his request on defendant Fiorello, and the name of the lawyer who will be representing Fiorello is not yet known because the answer to the complaint has not yet been filed. In any event, it is this court's practice to set a preliminary pretrial conference as soon as the defendant's answer has been filed. At that time, the parties are provided a "Notice Regarding the Telephone Preliminary Pretrial Conference," explaining what will happen at the conference and directing that discovery not begin until after the pretrial conference.

Now, therefore, IT IS ORDERED that plaintiff's "Motion for Discovery" is construed as a prematurely filed request for production of documents and the clerk of court is requested to amend the docket no. 3 accordingly.

Further, IT IS ORDERED that page 11 of the order entered herein on December 7,

2006, is amended to include the following sentence:

“8. Respondent Matthew J. Frank is DISMISSED from this action.”

Entered this 14<sup>th</sup> day of December, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB  
District Judge