

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

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RODNEY HOPKINS,

Plaintiff,

MEMORANDUM

v.

06-C-597-C

MATTHEW J. FRANK; DR. QUISLING;  
WARDEN, COLUMBIA CORRECTIONAL  
INSTITUTION;  
WARDEN ROBERT HUMPHREYS, RACINE  
CORRECTIONAL INSTITUTION; and  
CO MARSHALL,

Defendants.

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On April 6, 2007, plaintiff Rodney Hopkins was granted leave to proceed in forma pauperis in this civil action for injunctive and monetary relief on a number of his claims that defendants had denied him his constitutional rights. On May 14, 2007, defendants filed an answer, raising various affirmative defenses. Now plaintiff has filed a document titled “Plaintiff’s Reply to the Defendants’s Answer to Civil Complaint,” in which he argues that certain of defendants’ affirmative defenses are not valid.

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 the defendants. Although defendants have raised certain affirmative defenses in their

answer they have 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 defendants' 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 defendants' 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 15th day of June, 2007.

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