

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

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CLEVELAND LEE, SR.,

Plaintiff,

v.

MEMORANDUM AND ORDER  
06-C-690-S

DENNIS KUCHENS, LT.  
KRACHEY and RAISBECK,

Defendants.

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Plaintiff Cleveland Lee, Sr. was allowed to proceed on his First Amendment claims against defendants Dennis Kuchens, Lt. Krachey and Raisbeck. In his complaint he alleges that the defendant Kuchens removed plaintiff from his Religious study on April 4, 2006 and that defendants Krachey and Raisbeck denied him his mail from the National Black United Front of Houston.

On April 24, 2007 defendants moved to dismiss plaintiff's complaint for failure to exhaust administrative remedies. Plaintiff filed his opposition to the motion on May 11, 2007. No further briefing is required.

FACTS

Plaintiff is incarcerated at the Prairie du Chien Correctional Institution, Prairie du Chien, Wisconsin (PDCI). Defendants Dennis Kuchens is the Chaplain at PDCI). Defendants Lisa Krachey and Beverly Raisbeck are Correctional Officers at PDCI.

On April 8, 2006 plaintiff filed inmate complaint PDCI-2006-10030 complaining about the usage of the religious preference form. He exhausted his administrative remedies on this complaint.

On June 8, 2006 plaintiff filed inmate complaint PDCI-2006-10032 complaining that he was removed from religious study on April 4, 2006. On May 4, 2006 the PDCI Inmate Complaint examiner recommended that this complaint be dismissed. Plaintiff did not appeal this decision to the Corrections Complaint examiner.

On September 27, 2006 plaintiff filed inmate complaint PDCI-2006-28363 concerning the denial of his mail from the National Black United Front of Houston. On October 30, 2006 the Inmate Complaint Examiner dismissed plaintiff's complaint. Plaintiff did not appeal this decision to the Corrections Complaint Examiner.

#### MEMORANDUM

Defendants move to dismiss plaintiff's complaint for failure to exhaust his administrative remedies pursuant to 42 U.S.C. § 1997e(a). No action shall be brought with respect to prison conditions by a prisoner confined in any jail, prison or other correctional facility until available administrative remedies are exhausted. Prisoners must file their complaints and appeals in the place and at the time the prison's administrative rules require. Pozo v. McCaughtry, 286 F. 3d 1022, 1025 (7<sup>th</sup> Cir. 2002)

In Perez v. Wisconsin Department of Corrections, 182 F.3d 532, 535 (7<sup>th</sup> Cir. 1999), the Court held as follows:

...a suit filed by a prisoner before administrative remedies have been exhausted must be dismissed; the district court lacks discretion to resolve the claim on the merits, even if the prisoner exhausts intra-prison remedies before judgment.

The Court has reviewed the inmate complaints filed by plaintiff and concludes that he did not exhaust his administrative remedies on his claims that he was removed from religious services on April 4, 2006 and that he was denied mail from the National Black United Front of Houston. Accordingly, Perez requires dismissal of plaintiff's complaint because he did not exhaust his administrative remedies prior to commencing this action.

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his complaint must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7<sup>th</sup> Cir. 1997).

#### ORDER

IT IS ORDERED that defendants' motion to dismiss for plaintiff's failure to exhaust his administrative remedies is GRANTED.

Lee v. Kuchens, et al., 06-C-690-S

IT IS FURTHER ORDERED that judgment be entered in favor of defendants against plaintiff DISMISSING his complaint without prejudice for his failure to exhaust his administrative remedies.

Entered this 18<sup>th</sup> day of May, 2007.

BY THE COURT:

S/

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JOHN C. SHABAZ  
District Judge