

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

STEPHEN WENDELL JONES,

Plaintiff,

v.

RICK RAEMISCH,
in his official capacity;¹
WARDEN R. SCHNEITER, WSPF;
G. BOUGHTON, a Security Director;
B. KOOL, a Unit Manager; and
P. HUIBREGTSE, Under Warden,

Defendants.

ORDER

07-C-141-C

After filing three unsuccessful motions for a preliminary injunction, plaintiff is now trying a different tack, filing a massive 44-page, 89-paragraph proposed amended complaint in which he seeks to add 13 new defendants and several new claims. His motion for leave to amend his complaint will be denied.

¹ Plaintiff originally sued Matthew Frank in his official capacity. Because Frank has been replaced by Rick Raemisch as Secretary for the Wisconsin Department of Corrections, I have substituted Raemisch for Frank in accordance with Fed. R. Civ. P. 25(d).

First, plaintiff's proposed complaint is not in the form required by this court. When a party wishes to amend his complaint, he must file a document that can *replace* the original complaint. Requiring the parties and the court to refer to multiple complaints to determine the existence and scope of plaintiff's claims is confusing and overly burdensome. To avoid any confusion about exactly what plaintiff wishes to add or subtract from his proposed amended complaint, he will have to submit the proposed amended complaint in the following format: he should begin with a duplicate copy of his original complaint. He must then draw a line through the allegations he wishes to delete and circle or highlight allegations he is adding to the complaint.

I do not encourage plaintiff to file a second proposed amended complaint that complies with this requirement because the problems with his proposal are more than just procedural. As is the case with many of plaintiff's filings, there is no coherent narrative holding together his proposed amended complaint or the "affidavit" that accompanies it. Instead, his submissions are a disjointed collection of stream of consciousness allegations and citations to various statutes, regulations and exhibits, although most of the exhibits he cites are not attached to his proposed amended complaint but may be found strewn throughout the record among previous submissions plaintiff has filed. As far as I can tell, the thrust of plaintiff's new allegations is that he has received a demotion in his classification. In addition, he complains about being forced to wear leg irons, being denied various education

materials and staff retaliation.

I allowed plaintiff to proceed on one claim and one claim only: that defendants were violating his Eighth Amendment rights by subjecting him to a substantial risk of serious harm by forcing him to be around other prisoners who wish to harm him. Even if plaintiff's new claims stated a constitutional violation (and most of them do not), I could not allow plaintiff to proceed with them in this lawsuit. Because plaintiff has struck out under 28 U.S.C. § 1915(g), he may not proceed in forma pauperis on any claims unless they involve a danger of serious physical injury. I concluded in the order screening plaintiff's complaint that his claim for failing to protect him satisfied this standard, but plaintiff's proposed new claims do not. If plaintiff wishes to assert those claims, he will have to do so in a new lawsuit after he pays the full filing fee.

In addition to asserting new claims, plaintiff includes additional allegations providing new developments and more details regarding the claim on which he is proceeding. He says he has included them to stave off a motion to dismiss by defendants. These allegations are unnecessary. I have already concluded in the context of screening plaintiff's complaint that he states a claim upon which relief may be granted. Thus, a motion to dismiss for failure to state a claim would be a futile exercise. In any event, plaintiff does not need to plead evidence in his complaint. He should save that for trial or for opposing a motion for summary judgment filed by defendants.

ORDER

IT IS ORDERED that plaintiff Stephen Wendell Jones's motion for leave to file an amended complaint is DENIED.

Entered this 13th day of August, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge