

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

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TAYR KILAAB AL GHASHIYAH (KHAN),  
f/n/a JOHN CASTEEL,

Plaintiff,

MEMORANDUM

v.

07-C-308-C

MATTHEW FRANK, RICHARD SCHNEITER,  
CHRISTINE BEERKIRCHER, JAILOR A. JONES,  
GERALD KONDOZ, JAILOR SHARPE,  
JAILOR TAYLOR, JAILOR HANFIELD, JAILOR PRIMMER,  
JAILOR MICKELSON, JAILOR ESSER,  
JAILOR SCULLION, JAILOR BEARCE,  
JOHN McDONALD, JOHN POLINSKE,

Defendants.  
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A Daniel Baker, who describes himself as a “new plaintiff” in this action, has submitted a document for filing titled “Motion to Intervene,” which is accompanied by an affidavit of indigency and a request for leave to proceed in forma pauperis. Because these documents have been submitted by a non-party to this lawsuit, they cannot be considered. Only the parties to a lawsuit may file motions. In addition, the document cannot be considered because it has not been served on the parties to this action. Therefore, I am

placing the document in the file of this case but will not act on it. Nevertheless, I will make these additional comments.

Although inmate Baker has signed the above-referenced documents and submitted them in an envelope bearing his return address, it appears that the motion to intervene has been written in plaintiff's hand. Therefore, it is possible that plaintiff will immediately resubmit the motion on his own. In the event that is his plan, it is important he and any intended co-plaintiff understand the consequences of seeking leave to proceed in a group complaint.

In Boriboune v. Berge, 391 F.3d 852 (7th Cir. 2004), the Court of Appeals for the Seventh Circuit court observed that there are a number of reasons a prisoner might not want to join in a group complaint filed in federal court.

First, although two or more prisoners may wish to join their claims in one complaint, each is bringing an action subject to the 1996 Prison Litigation Reform Act and each must pay the full \$350 fee for filing the action. Boriboune v. Berge, 381 F.3d at 856. In other words, before this court will screen an amended complaint seeking to add a new prisoner plaintiff, the new prisoner will have to pay either a full filing fee if he does not qualify to proceed in forma pauperis, or an initial partial payment of the fee calculated pursuant to the method described in 28 U.S.C. § 1915(b). If an inmate qualifies for payment of an initial partial payment, he will thereafter be responsible for paying the remainder of the full fee in

installments pursuant to 28 U.S.C. § 1915(b)(2). Therefore, any motion seeking permission from the court for another inmate to intervene must be accompanied by the proposed new plaintiff's trust fund account statement for the six-month period immediately preceding the filing of the motion, as well as a proposed amended complaint setting forth facts from which an inference may be drawn that the proposed plaintiff has standing to join the lawsuit. (Any such proposed amended complaint would also have to include all of the allegations relating to the claims on which the original plaintiff had been allowed to proceed, because if the amended complaint were to be allowed, it would replace the original complaint.)

Second, the proposed amended complaint would be subject to the screening provisions of 28 U.S.C. § 1915A. If, upon screening, I were to conclude that the new proposed prisoner plaintiff's action is frivolous, malicious or fails to state a claim upon which relief may be granted, I would be required to record a strike under 28 U.S.C. § 1915(g) against the proposed plaintiff who brought the action. In addition, I would be required to record a strike against every other prisoner who is a co-plaintiff in the case. According to the court of appeals, when a prisoner in a group complaint signs the pleading, he attests to the validity of all of the individual actions in the complaint, whether or not they concern him personally. Therefore, he assumes the risk of incurring a strike if the claims relating to any other prisoner warrant a strike under § 1915(g). This means, for example, that in the course of one lawsuit involving three inmate plaintiffs, it is possible for all of co-plaintiffs to strike

out under § 1915(g), upon a finding that each of their actions warrants a strike.

Third, each plaintiff in a group complaint will be held legally responsible for knowing precisely what is being filed in the case on his behalf. He will be subject to sanctions under Fed. R. Civ. P. 11 for any pleading, motion or other paper filed over his name if such sanctions are found warranted in any aspect of the case.

Finally, in screening the proposed amended complaint, the court will consider whether the action of either plaintiff should be severed and if it decides severance is appropriate, the inmate bringing the severed action will be required to prosecute his claims in a suit separate from the original lawsuit.

To insure that inmate Baker has a full understanding of the consequences of joining in plaintiff's action, I am asking the clerk to send a copy of this order to Baker. In addition, to complete the parties' records, I am enclosing a copy of Baker's submission to plaintiff and defense counsel with a copy of this order.

Entered this 26th day of September, 2007.

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