

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

TIM VAN OSTRAN,

Petitioner,

v.

DEPARTMENT OF CORRECTIONS PSY.
CLINICAL SERVICES, SUPERVISOR OF
CLINICAL SERVICES RUEBBEN ASH,
DR. GAGE, DR. YUNGHANS, CRISIS
WORKER SHANNEN SHARP, DR. HORN,
HEAD OF I.C.R. ELLEN RAY, DEPUTY WARDEN
OF W.S.P.F. PETER HUIBREGTSE,

Respondents.

ORDER

07-C-382-C

Petitioner Tim Van Ostran, a prisoner, has filed a proposed complaint in which he contends that, because he is seriously mentally ill, housing him at the Wisconsin Secure Program Facility violates the Eighth Amendment. Petitioner seeks leave to proceed in forma pauperis. From his trust fund account statement, I conclude that petitioner has “no means by which to pay the initial partial filing fee.” 28 U.S.C. §1915(b)(4).

Although petitioner qualifies for indigent status, I am required to screen his complaint and dismiss it if it is legally frivolous, malicious, fails to state a claim upon which relief may

be granted or asks for money damages from a defendant who by law cannot be sued for money damage. 28 U.S.C. §§ 1915 and 1915A. Unfortunately, I must dismiss petitioner's complaint because it is preempted by the settlement agreement in Jones 'El v. Schneider, No. 00-C-421-C. Like all prisoners at the Wisconsin Secure Program Facility, petitioner is a member of the class in Jones 'El. As a member of the class, he is bound by the settlement agreement, which addresses the very issue petitioner is raising in his complaint. Under that agreement, prisoners who are seriously mentally ill may not be incarcerated at the Secure Program Facility. A psychiatric monitor has been appointed to help insure that prison officials comply with that agreement. (A copy of the agreement is attached to this order.)

If petitioner believes he is being held wrongfully at the Secure Program Facility because he is seriously mentally ill, he should contact the psychiatric monitor at the following address:

Joseph Layde
Medical College of Wisconsin
8701 Watertown Plank Road
Milwaukee, WI 53226

I am forwarding a copy of petitioner's complaint and this order to counsel and the psychiatric monitor for their review.

ORDER

IT IS ORDERED that petitioner Tim Van Ostran's complaint is DISMISSED as preempted by the settlement agreement in Jones 'El v. Schneider, 00-C-421-C.

Entered this 19th day of July, 2007.

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