

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

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KARL ALEXANDER MEYER,

Petitioner,

OPINION and ORDER

v.

08-cv-278-bbc

WISCONSIN DEPARTMENT OF  
CORRECTIONS and NEW LISBON  
CORRECTIONAL INSTITUTION,

Respondents.  
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In this civil action for monetary and injunctive relief brought under 42 U.S.C. § 1983, petitioner Karl Alexander Meyer contends that respondents Wisconsin Department of Corrections and New Lisbon Correctional Institution violated his right to free exercise of religion by denying his request for religious property for an item related to his religion. Petitioner has requested leave to proceed in forma pauperis and has paid the \$16.59 initial partial filing fee.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, when the litigant is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave to proceed if the prisoner has had three or more lawsuits or appeals dismissed for lack of legal merit or

if the prisoner's complaint is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a respondent who by law cannot be sued for money damages. 28 U.S.C. § 1915(e)(2).

Because petitioner does not name as parties any individuals involved in denying his request for religious property, I construe his complaint as a cause of action brought not under 42 U.S.C. § 1983, but rather one brought under the Religious Land Use and Institutional Persons Act (RLUIPA) directed at respondent Wisconsin Department of Corrections (respondent New Lisbon Correctional Institution is a building and cannot be sued; therefore, petitioner's claim against the correctional institution must be dismissed from this case). However, because petitioner does not describe his religion, the item allegedly denied or the item's relation to the exercise of his religion, his allegations lack the notice required under Fed. R. Civ. P. 8. Rather than dismiss petitioner's complaint on this ground, I will give petitioner until June 27, 2008 in which to submit a supplement to his complaint that identifies the nature of his religion, the item he was denied and how that item relates to the exercise of his religion.

From petitioner's complaint, I draw the following allegations of fact.

#### ALLEGATIONS OF FACT

Petitioner Karl Alexander Meyer is an inmate at the New Lisbon Correctional

Intitution in New Lisbon, Wisconsin. Respondent New Lisbon Correctional Institution is the prison where petitioner was at all times relevant to this complaint and respondent Wisconsin Department of Corrections is the state agency operating Wisconsin's state prisons including the New Lisbon Correctional Institution. Respondent Wisconsin Department of Corrections receives federal funding.

On February 15, 2007, petitioner filed a "Request for New Religious Practice (Property)" form. On March 6, 2007, the chaplain approved petitioner's request after researching the issue. However, on March 27, 2007, the program director for respondent New Lisbon Correctional Institution denied petitioner's request, explaining that the item was "non-essential" and would interfere with the institution's ability to "keep religious property manageable." On April 17, 2007, an unknown person at respondent Wisconsin Department of Corrections denied the request. On May 2, 2007, Timothy Lundquist, warden of respondent New Lisbon Correctional Institution denied the request.

On May 9, 2007, petitioner filed a grievance complaining about prison officials' denial of his request for religious property. His grievance was dismissed and he appealed the dismissal all the way up to Rick Raemisch, the secretary for respondent Wisconsin Department of Corrections. The dismissal was upheld.

## OPINION

Before addressing petitioner's claim, I note that respondent New Lisbon Correctional Institution is not a proper defendant in this case. The correctional institution is a building, not a legal entity; it is incapable of accepting service of petitioner's complaint or responding to it. Therefore, respondent New Lisbon Correctional Institution will be dismissed from this case.

Petitioner contends that prison officials denied him access to a religious item on the grounds that the item was "non-essential" and interfered with their ability to keep religious property manageable in the institution. Both the First Amendment free exercise clause and the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) offer inmates protection to exercise their religion. A claim for violation of First Amendment free exercise rights is properly asserted under 42 U.S.C. § 1983, under which a person may bring a cause of action against *persons* who "under color of any statute, ordinance, regulation, custom, or usage" of state power deprive a citizen of any right under the Constitution or federal law. Respondents Wisconsin Department of Corrections and New Lisbon Correctional Institution are not "persons" that may be sued under § 1983. Will v. Michigan Department of State Police, 491 U.S. 58, 66-67 (1989); Witte v. Wisconsin Department of Corrections, 434 F.3d 1031, 1036 (7th Cir. 2006). Although petitioner may not proceed on a First Amendment claim against respondents, he may be able to proceed against them under

RLUIPA, under which a prisoner may bring a cause of action “against a government,” including “any branch, department, agency, instrumentality or official” of a state government. 42 U.S.C. §§ 2000cc-2(a), 2000cc-5(4)(i)-(ii). RLUIPA prohibits prisons receiving federal funds from “impos[ing] a substantial burden on the religious exercise” of a prisoner, unless the government can show that the burden imposed was the “least restrictive means” of furthering a “compelling governmental interest.” 42 U.S.C. §§ 2000cc-1(a). To state a claim under RLUIPA, a petitioner must allege facts tending to show “(1) that he seeks to engage in an exercise of religion, and (2) that the challenged practice substantially burdens that exercise of religion.” Koger v. Bryan, 523 F.3d 789, 796 (7th Cir. 2008) (citing 42 U.S.C. § 2000cc-2(b)).

In his complaint, petitioner fails to identify his religion, what item he was denied, or how that item relates to his religion. Without that information, respondents do not have “fair notice” of what petitioner’s claim is, as required under Fed. R. Civ. P. 8. DeWalt v. Carter, 224 F.3d 607, 612 (7th Cir. 2000) (Complaint must contain “a short and plain statement of the claim” that gives defendant fair notice of what plaintiff’s claim is and grounds upon which it rests.) Without knowing what religion petitioner practices and how the item he was denied relates to the exercise of that religion, it is impossible to determine whether he states a claim under RLUIPA. Therefore, petitioner will be given an opportunity to supplement his complaint to provide further details regarding the nature of his religion,

the item he was denied and how it relates to the exercise of his religion. In addition, if petitioner believes that the materials he submitted and received from prison officials related to his request for religious property and subsequent grievance could help petitioner describe the nature of his claim, he may attach those materials to his supplement.

### ORDER

IT IS ORDERED that:

1. Respondent New Lisbon Correctional Institution is DISMISSED from this lawsuit.

2. A decision is STAYED whether petitioner may proceed with his claim that rights under RLUIPA were violated when he was denied a request for religious property for an item related to his religion. Petitioner may have until June 27, 2008, in which to submit a supplement to his complaint that identifies the nature of his religion, the item he was denied and how it relates to the exercise of his religion. If, by June 27, 2008, petitioner fails to submit the required addendum, I will assume that he wishes to dismiss the claim voluntarily

and will enter an order dismissing this action in its entirety.

Entered this 13<sup>th</sup> day of June, 2008.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge