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

ROY MITCHELL,

Plaintiff,

v.

SHERIFF SERGEANT MR. PAT PRICE, *et al.*,

Defendants.

OPINION and ORDER

11-cv-260-wmc

Plaintiff Roy Mitchell, currently incarcerated that the Columbia Correctional Institution, is proceeding in this case on her[1] claims that defendants Koehler, Price, Algiers,[2] Johnson, Werkherse and Wilson, employees at the Dane County Jail, violated her equal protection rights because of plaintiff's transgender lifestyle, that defendant Wilson used excessive force against plaintiff and that defendant Koehler defamed plaintiff by labeling her as a "Hermaphrodite." Now before the court are several motions filed by plaintiff.

First, plaintiff has filed a document titled "Motion Objecting to Magistrate Judge Mr. Stephen Crocker Presiding Over All Aspect of this Case," in which she notes that she has not consented to my jurisdiction and requests that "all aspects" of the case be heard by a district judge. Pursuant to Local Rule 2(a) (which mirrors 28 U.S.C. § 636(b)(1)(A)) I have ruled on non-dispositive matters in this lawsuit and I will continue to do, as is this court's standard operating procedure in all civil lawsuits assigned to all of the judges in this court. All dispositive matters in this lawsuit are reserved to Chief Judge William Conley for decision. Litigants cannot opt out of this arrangement.

---

[1] At plaintiff's request, the court will refer to plaintiff using female pronouns.

[2] Plaintiff was allowed to proceed against an Officer Timothy "Aguires." Plaintiff has filed a motion to amend the name of this defendant to Timothy Algiers, and defendants do not oppose the change. Accordingly, I will grant plaintiff's motion and have amended the caption to reflect the proper spelling of this defendant's name.

Next, plaintiff has filed two motions asking for an order allowing her to access funds in her release account to litigate this action. Language in 28 U.S.C. § 1915(b)(1) suggests that prison officials are required to use a prisoner's release account to satisfy an *initial partial payment* of the filing fee if no other funds are available. *See Carter v. Bennett*, 399 F. Supp. 2d 936, 936-37 (W.D. Wis. 2005). However, with the exception of initial partial payments, federal courts lack the authority to tell state officials whether and to what extent a prisoner should be able to withdraw money from her release account. Accordingly, I will deny these motions.

Plaintiff has filed a series of motions to compel discovery, often intertwined or accompanies by motions for sanctions. She has filed a motion to compel responses to her May 17, 2012 requests for admissions and production of documents, dkt. 51, as well as a motion for sanctions, dkt. 50, both of which I will deny. Defendants responded to the motions, explaining that they responded to plaintiff's requests for admissions on June 15. Plaintiff filed a reply stating that "it is true that the defendants [have] produced the Requests for Admissions at the last minute." This suggests that plaintiff filed her motions without allowing at least three extra days for her discovery requests to arrive in defendants' mailbox and then for defendants' responses to arrive at the prison. *See* F.R. Civ. Pro. 6(d). Plaintiff also seems to be claiming that defendants did not respond to her requests for production for documents (such as medical records, jail logs and grievance summaries), but the record demonstrates that she either received those documents (she includes many of them in her summary judgment materials) or they are addressed by later motions to compel filed by plaintiff, as discussed below.

Next, plaintiff has filed a motion to compel the production of defendant jail staff's disciplinary conduct records, dkt. 63, stating in part that she needs these records to show the "factual relevancy of this action and the character and historical conduct . . . and past encounters

with prisoners." To the extent that plaintiff seeks these documents to show defendants' propensity to commit such acts, such evidence is not admissible. F.R. Ev. 404(a). However, to the extent that there may be information that plaintiff can glean from disciplinary proceedings that resulted from the events discussed in *plaintiff's* complaint, she is entitled to discover those proceedings for the purpose of establishing narrative completeness. Whether such records–if they exist–are admissible at trial is a different question. Accordingly, defendants must disclose to plaintiff any disciplinary proceedings regarding their treatment of plaintiff that forms the basis of her claims. To the same effect, pursuant to F.R. Ev. 404(b), there are circumstances in which "other acts" evidence can be admissible at trial; therefore, if any defendant actually has been found by any court or administrative entity to have engaged in the same conduct alleged against that defendant in this lawsuit, then that finding is discoverable. The *admissibility* of any such evidence at trial is a different question that can be resolved through motions *in limine.*

Plaintiff's next motion to compel, dkt. 65, concerns interrogatory responses from defendants Wilson and Price that defendants provided one to two weeks after the 30-day deadline. Because plaintiff now has received the responses, her motion to compel is moot. In another motion to compel, dkt. 70, plaintiff reiterates her request and seeks sanctions against defendants. However, defendants' explanation for the late responses (that counsel's contact at the Dane County Jail was on vacation for at least part of the 30-day period and there was difficulty in reaching defendants who no longer worked at the jail) suffices to show that defendants and counsel are operating in good faith. They also explain that they kept plaintiff abreast of the issues causing delay. Accordingly, sanctions are neither necessary nor appropriate.

In her next motion to compel, dkt. 69, plaintiff seeks disclosure of defendant Price's work schedule, because Price already has admitted that he told her that he was out of the office at

certain times he could have been investigating plaintiff's complaints. Defendants contend that whether Price really was in the office or on vacation is irrelevant, but any evidence that Price actually lied about his whereabouts in order to conceal his decision to put plaintiff's complaints on the back burner could raise an inference that he meant to discriminate against plaintiff. Accordingly, defendants must disclose Price's work schedule for the dates sought by plaintiff.

Plaintiff also seeks summaries of the inmate grievance history against various defendants, at least in part to show "defendants' characters and ethical standards." Plaintiff is entitled to the same discovery outlined above: if any defendant actually has been found by any court or administrative entity to have engaged in the same conduct alleged against that defendant in this lawsuit, then that finding is discoverable. Again, the admissibility of any such evidence is a different question.

In her next motion, dkt. 86, plaintiff seeks to compel answers to interrogatories to defendants Price and Algiers, and seeks sanctions for their alleged failure to provide these answers within 30 days. Defendants explain that plaintiff's seven requests would have put her five over the 25-interrogatory limit under Fed. R. Civ. P. 33, they informed plaintiff of this and defendants responded within 30 days after plaintiff told them which two of the seven she wanted them to answer. This adequately establishes that defendants have complied with their discovery obligations. Plaintiff's motions to compel and for sanctions will be denied.

Finally, plaintiff has submitted a motion for appointment of counsel, stating that she is an indigent and inexperienced litigator and that this case is too complex for her. *See* dkt. 117. Plaintiff has not provided any information that would persuade the court to change its decisions denying plaintiff's previous requests for a lawyer. Plaintiff has personal knowledge of the

circumstances surrounding the events, has conducted discovery and submitted documents to the court that have been appropriately directed and reasonably articulate. Therefore, I will deny the motion without prejudice to another motion if plaintiff's circumstances change in some material fashion.

ORDER

It is ORDERED that:

(1) Plaintiff Roy Mitchell's motion to amend the caption, dkt. 55, is GRANTED.

(2) Plaintiff's "Motion Objecting to Magistrate Judge Mr. Stephen Crocker Presiding Over All Aspect of this Case," dkt. 58, is DENIED.

(3) Plaintiff's motions for the use of release account funds, dkts. 57 & 93, are DENIED.

(4) Plaintiff's motions to compel discovery, dkts. 63 & 69, are GRANTED IN PART and DENIED IN PART. Defendants shall provide plaintiff with discovery as described in the opinion above.

(5) The remainder of plaintiff's motions to compel discovery and for imposition of sanctions, dkts. 50, 51, 65, 70 & 86, are DENIED.

(6) Plaintiff's renewed motion for appointment of counsel, dkt. 117, is DENIED without prejudice.

Entered this 11th day of December, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge