IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

JERRY LEE LEWIS,

Plaintiff,

v.

JEROME SWEENEY, BRIAN KOOL,
JOHN KUSSMAUL, MARY TAYLOR,
JEREMY McDANIELS and JARED BARR,

Defendants.

MEMORANDUM

13-cv-457-bbc

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

Pro se prisoner Jerry Lee Lewis is proceeding on a claim that various prison officials violated his rights under the Eighth Amendment by using restraints on him that were too small. Plaintiff has submitted a letter in which he asks the court several questions about how to proceed with the case. Dkt. #36.

First, plaintiff asks for a response to a letter he wrote March 18, 2014 related to the collection of the filing fee. However, there is no letter in this case that fits plaintiff's description. Presumably, plaintiff is referring to a letter he wrote in a *different* case, Lewis v. Esser, 14-cv-40-bbc (W.D. Wis.), dkt. #11. The clerk's office already responded to that letter, dkt. #13, so I do not need to address it in this memorandum. In the future, plaintiff should take care not to combine issues about different cases in the same document. In addition, he should identify the appropriate case number for any document that he files.

Second, plaintiff says that he misnamed an individual who is discussed in the complaint but is not named as a defendant and he asks how he should correct the mistake. (Plaintiff does not identify the individual in his letter.) Generally, when a party wishes to make any changes to a complaint, he must file an amended complaint that can replace in full the original complaint. However, because plaintiff's mistake does not relate to the scope of his claims or the names of the defendants, I see no reason to require plaintiff to file an amended complaint. Instead, he may submit a supplement to his complaint in which he identifies the misnamed individual and provides the correct name.

Third, plaintiff asks how he can learn the first names of certain staff members so that he can call them as witnesses. If plaintiff does not know the full names of staff members who may have information that is relevant to his claim, he may use the discovery process to learn the name. For example, he may submit an interrogatory to defendants under Fed. R. Civ. P. 33 in which he describes the information he knows about the staff member so that defendants can try to identify his or her name.

Fourth, plaintiff says that he wants to "have a video made showing up close plaintiff being handcuffed behind his back with normally used handcuffs through the cell door slot." However, the discovery rules do not require parties to create records; the rule is limited to those records that already exist. Cholakyan v. Mercedes-Benz USA, LLC, No. CV 10-5944 MMM JC, 2011 WL 7575379 (C.D. Cal. Dec. 20, 2011) ("[C]ourts may not compel a party to create new documents solely for their production in response to a Rule 34 request."). Accord Georgacarakos v. Wiley, No. 07-CV-01712-MSK-MEH, 2009 WL 924434 (D. Colo.

Apr. 3, 2009); Smith v. Phamm, No. 03-3451-SAC, 2008 WL 2944905 (D. Kan. July 28, 2008); Marchese v. Department of the Interior, No. Civ. A. 03-3082, 2004 WL 2297465, at *4 (E.D. La. Oct.12, 2004); Harris v. Athol-Royalston School District Committee, 200 F.R.D. 18, 20 (D. Mass. 2001). Accordingly, I cannot require defendants to create a video for plaintiff.

If plaintiff wishes to make his own video, he would need to acquire his own video equipment, which is not something that the court can provide. In addition, he would need permission from the appropriate prison officials to make the video. Of course, with or without a video, plaintiff is free at the summary judgment stage or at trial to provide his own testimony in which he explains the handcuffing process and the effect it has on him.

Finally, plaintiff says he does not know how to comply with a requirement in the preliminary pretrial conference order to disclose the subject matter of the testimony of his experts. In particular, he says that he intends to call prison employees as experts "to explain their actions on a certain day" but he does not know what they will say. Dkt. #36 at 2. However, expert disclosure requirements are limited to witnesses giving testimony "based on scientific, technical, or other specialized knowledge." Fed. R. Evid. 701. If plaintiff intends to call a witness solely to discuss that witness's own conduct and observations, he does not have to submit a report or identify the witness's opinions.

In closing, I note that the court does not have the resources to issue a memorandum each time plaintiff has a question about how to litigate his case. Plaintiff could have answered many of his own questions by reviewing the Federal Rules of Civil Procedure,

which should be available in the prison library. In the future, plaintiff should look for the answer to his questions in those rules or in this court's procedures, which he received with the preliminary pretrial conference order. Alternatively, it may be more efficient for him to speak with the prison librarian.

Entered this 15th day of May, 2014.

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