

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

GARY CARON,

Plaintiff,

v.

DR. BURTON COX, JR., *et al.*,

Defendants.

ORDER

15-cv-411-wmc

On December 29, 2015, the court held what started out as a recorded telephonic preliminary pretrial conference. Plaintiff Gary Caron appeared without an attorney. Defendants appeared by Brandon Flugaur. Plaintiff reports that he is illiterate, having recently tested out at the first grade reading level. All of his submissions have been written by jailhouse lawyers who read aloud to plaintiff all of the documents filed in this case. Plaintiff reports that he is seeking to retain counsel but has not yet received three rejection letters. Plaintiff reports that following the PVP procedure that is the subject of this lawsuit, he has had three additional surgeries (at two different hospitals) and is scheduled for a fourth. Although plaintiff was a cordial and active participant in the telephonic conference, it became apparent that he was not always keeping up with the conversation, despite the court's efforts to keep it simple.

As a result of all this, the court declined to set a full schedule in this case. Instead, the court gave the state a deadline to file a motion regarding administrative exhaustion and set a trial date as a placeholder. The court directed plaintiff to file a motion for assistance in recruiting counsel as soon as he has accumulated three rejection letters from attorneys, and to accompany his motion with any documentation from his DOC file(s) that reports his reading level, IQ, cognitive functioning measures, or any other information that would assist the court in determining whether it is appropriate to recruit counsel to represent him in this lawsuit. (Obviously, if plaintiff finds and retains a lawyer on his own, that solves the problem).

Service of documents

The DOJ has agreed to accept electronic service of documents on behalf of the litigants it represents. This means that you do not have to serve your filings separately on any opponent represented by the DOJ. Submitting a filing to the court will count as serving an opponent represented by the DOJ.

Deadline to file a summary judgment motion alleging failure to exhaust administrative remedies: February 12, 2016

In many prisoner lawsuits, if the plaintiff has not properly exhausted the administrative remedies available to him at his institution, then he may not bring his claims to federal court. Such a “failure to exhaust” is an affirmative defense that a defendant may raise at the beginning of a lawsuit before either side has put too much time or effort into it.

If a defendant wishes to obtain summary judgment on the basis of a plaintiff’s failure to exhaust his *administrative* remedies, then that defendant must file a summary judgment motion raising this issue alone not later than the deadline set forth above. Summary judgment motions are explained in more detail later in this order. Because this is a narrow issue that can be decided on a narrow set of facts, the parties do not need to follow the court’s Procedure On Summary Judgment, which applies to any other summary judgment motion filed in this court. Instead, the moving defendant may submit a motion, supporting affidavits, relevant exhibits, and a supporting brief. The defendant need not submit a separate document containing proposed findings of fact, so long as the material facts can be found in the supporting affidavits and exhibits.

Plaintiff must file and serve any response in opposition to such a motion not later than 21 days after receiving a copy of the motion and supporting materials. Plaintiff may file a responsive

brief, affidavits and exhibits which must be relevant to and limited to the question whether plaintiff has adequately exhausted his administrative remedies on his claims. The plaintiff need not submit a separate document containing proposed findings of fact, so long as any material facts can be found in the supporting affidavits and exhibits.

Defendants may file a reply not later than seven days after receiving plaintiff's response.

Jury Selection and Trial: February 6, 2017 at 9:00 a.m.

The parties should view this date as a placeholder pending the court's decision on any request by plaintiff to assist in the recruitment of volunteer counsel.

Entered this 29th day of December, 2015.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge