

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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**IN THE MATTER OF EXHAUSTION OF INMATE
GRIEVANCE PROCEDURES IN CIVIL RIGHTS
CASES BY STATE INMATES**

U.S. DISTRICT COURT
W.D.N.Y.-ROCHESTER
ORDER

On September 28, 1992, the United States Department of Justice granted full certification to the New York Department of Correctional Services Inmate Grievance Program pursuant to 42 U.S.C. § 1997e and 28 C.F.R. Part 40. The policies and procedures of such Grievance Program are set forth in New York State Department of Corrections' Directives 4040 and 4041, dated November-27, 1991 and February 6, 1992, respectively. Accordingly, it is hereby

ORDERED, that prior to litigating claims under 42 U.S.C. § 1983 in this Court, inmates in the custody of the State of New York shall exhaust any remedies they may have with respect to those claims through the above-referenced Inmate Grievance Program. Any complaint arising under § 1983 should include a statement either that the complained-of action is not grievable under the Grievance Program or that remedies available under such Grievance Program have been exhausted. For purposes of this Order, a copy of the disposition issued by the Central Office Review Committee in accordance with N.Y.S. D.O.C. Directive 4040, Part V.C. shall constitute sufficient proof of exhaustion. If any complaint filed under § 1983 by or on behalf of an inmate neither states that the inmate's claim(s) is/are not grievable nor is accompanied by sufficient proof of such exhaustion, the action shall be continued, that is, stayed, by further order of the Court for a period of 90 days to allow the inmate to exhaust the remedies available under the Grievance Program. If an inmate's complaint alleges a grievance claim which has not been exhausted, such inmate may submit his/her sworn affidavit, or, if represented by an

attorney, the affidavit of such attorney, stating with specificity the reasons why such a continuance is not appropriate and would not serve the interests of justice. Such affidavit may be submitted either with the complaint or by such date as may be established by further order of the Court. If it is so established to the satisfaction of the Court that continuance of the case for ninety (90) days is not appropriate and would not serve the interests of justice, and provided that the complaint is not otherwise subject either to dismissal or stay, the Court will promptly order service of the summons and complaint upon the proper parties. It is further

ORDERED, that an inmate whose action is so continued must provide the Court with proof of exhaustion within one hundred (100) days of such continuance. Absent good cause, failure to do so may result in dismissal of the action with prejudice. It is further

ORDERED, that a continuance issued pursuant to this Order shall constitute cause to extend the period of time for service of an inmate's summons and complaint under Federal Rule of Civil Procedure 4(j). Upon the presentation of sufficient proof of exhaustion of remedies under the Inmate Grievance Program, the Court will order service of the summons and complaint upon the proper parties. It is further

ORDERED, that provisions of this Order do not relieve an inmate from the obligation to comply with the Order In The Matter Of Applications For Leave To Proceed In Forma Pauperis In Civil Rights And Habeas Corpus Cases By State And Local Prisoners, filed October 6, 1989.

IT IS SO ORDERED.

Dated:

November 18, 1992

ATTEST: A TRUE COPY
U.S. DISTRICT COURT, WDNY
(RODNEY C. EARLY, CLERK)

By

Lizana Lester
Deputy Clerk

Original Filed

11/19/92

Michael A. Telesca

Michael A. Telesca
Chief, United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

_____,

Plaintiff,

v.

_____,

_____,

ORDER

Defendant.

The plaintiff has requested permission to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(d), has met the statutory requirements, and has complied with the Order In the Matter of Applications for Leave to Proceed in Forma Pauperis in Civil Rights and Habeas Corpus Cases by State and Local Prisoners, filed October 6, 1989. Accordingly, the plaintiff's request to proceed in this court as a poor person is hereby granted. The Clerk is directed to file the plaintiff's papers.

Plaintiff, a person incarcerated in _____ Correctional Facility, has filed this action seeking relief under 42 U.S.C. § 1983. Pursuant to 42 U.S.C. § 1997e and the Order in the Matter of Exhaustion of Inmate Grievance Procedures in Civil Rights Cases by State Inmates, filed _____, 1992, (attached) this matter is hereby continued until _____, 199_, to allow plaintiff to pursue his/her claim through the New York Department of Correctional Services Inmate Grievance Program.

Alternatively, plaintiff may demonstrate to this Court by the sworn affidavit of plaintiff or of his/her counsel, why the interests of justice would not be served by requiring him/her to

