IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

WILLIAM STRINGER and MICHAEL McBRIDE, Plaintiffs, vs. WILLIAM KAUTZKY and JOHN MATHES, Defendants.	**No. 4:01-cv-40456-JEG** **ORDER GRANTING MOTION FOR SUMMARY JUDGMENT**

Plaintiffs William Stringer and Michael McBride bring this action pursuant to 42 U.S.C. § 1983, alleging Defendants denied Plaintiffs their constitutional right of access to the courts. After Defendants moved for partial summary judgment based on Plaintiffs' failure to exhaust their administrative remedies, this Court adopted a report and recommendation by Magistrate Judge Celeste F. Bremer recommending that the Court deny Defendants' motion for partial summary judgment. Defendants thereafter filed a second motion for summary judgment, which Plaintiffs resist. The matter is ready for ruling. For the following reasons, the Court grants Defendants' second motion.

I. Summary Judgment Standard.

Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). To preclude the entry of summary judgment, the

nonmovant must make a sufficient showing on every essential element of its case for which it has the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). The nonmoving party must go beyond the pleadings and by affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); Celotex, 477 U.S. at 324. The quantum of proof that the nonmoving party must produce is not precisely measurable, but it must be "enough evidence so that a reasonable jury could return a verdict for the nonmovant." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 257 (1986). On a motion for summary judgment, the Court views all the facts in the light most favorable to the nonmoving party and gives that party the benefit of all reasonable inferences that can be drawn from the facts. Lickteig v. Bus. Men's Assur. Co. of Am., 61 F.3d 579, 583 (8th Cir. 1995).

II. Summary of Material Facts.

Defendants maintain that Plaintiffs have not exhausted their available administrative remedies by following the proper procedures for filing a grievance at ISP. In the previous ruling on Defendants' motion for partial summary judgment, of which the Court takes full judicial notice, the Court pointed out,

> [Grievance Officer David] DeGrange, however, stated in his affidavit that in practice inmates do not always have to use the designated forms to exhaust. No evidence indicates when the designated forms are not required. Similarly, no evidence shows how, other than using the designated forms, an inmate may submit a grievance or appeal. [Warden] Mathes did not return the memorandum to Plaintiffs for them to resubmit their grievance in proper form.

> When prison officials do not establish the administrative rules applicable to the inmate at the time and place, and under the circumstances of his incarceration, the district court may lack a sufficient factual basis on which to find that the inmate failed to exhaust his administrative remedies. [Foulk v. Charrier, 262 F.3d 687, 698 (8th Cir. 2001).]

(Report and Recomm. at 12, Clerk's No. 43; Order Adopting Report and Recomm., Clerk's No. 53.) Based on the summary record, the Court ruled that Plaintiffs "generated a genuine issue of material fact concerning whether, at the time and place, and under the circumstances of their incarceration, they met ISP's requirements for filing and appealing a grievance." (Report and Recomm. at 13; Order Adopting Report and Recomm., Clerk's No. 53 .) Defendants' second motion for summary judgment addresses the question whether Plaintiffs' memorandum to Warden Mathes and his response constitute compliance with ISP's grievance policy.

Plaintiffs do not dispute Defendants' Second Statement of Undisputed Facts (Clerk's No. 57), but they argue Defendants' additional facts are nearly identical to those submitted with the first motion for summary judgment (Clerk's No. 36). Defendants have submitted a supplemental affidavit of Grievance Officer David DeGrange. DeGrange states, "If paperwork is submitted which is not on the designated [grievance] form, it must meet the requirements for a grievance. Specifically, it must be identified as a grievance, must contain the required information including steps taken for an informal resolution of the problem." (DeGrange Aff. ¶ 4.) DeGrange states the grievance must be submitted to a grievance officer, who numbers the grievance, issues a receipt for it, investigates it, and maintains the records of grievances filed. (DeGrange

Aff. ¶ 5.) DeGrange states a document is considered a grievance "[o]nly if the proper form is submitted with the required information or on other paperwork which is not on the form, but contains the required information, and submitted to the proper person." (DeGrange Aff. ¶ 6.) "If an offender does not clearly specify a matter as a grievance by using the proper form or designating paperwork with the required information as a grievance and filing it with the proper person, it is not a grievance." (DeGrange Aff. ¶ 8.) DeGrange acknowledges Plaintiffs sent the Warden a memo that Plaintiffs contend is a grievance. According to DeGrange, memos sent directly to the Warden do not comply with the Iowa Department of Corrections policy for filing, responding to, and recording grievances; they are therefore not considered grievances. The Warden's role in the grievance process is in an appeal capacity only. (DeGrange Aff. ¶ 10.) DeGrange avers he never received an inmate memorandum addressed to Warden Mathes referred to by Plaintiffs, and as a result the memo "was never numbered or made a[] grievance as defined by institutional policy," and Plaintiffs never "filed a grievance relating to the denial of access to the courts by not letting them use red star envelopes." (DeGrange Aff. ¶ 11.)

III. Discussion.

As the Court previously ruled, 42 U.S.C. § 1997e(a) requires that Plaintiffs complete the grievance process at ISP before filing suit. It is undisputed that Plaintiffs' memo to the Warden was not on a standard grievance form. Defendants' supplemented summary judgment record clarifies the circumstances under which a document that is

not on a standard grievance form is nonetheless treated as a grievance under the prison's grievance procedure. Plaintiffs insist the Warden "possesses the inherent authority to consider and process a grievance that ordinarily would be processed by a grievance officer" (Pls.' Resist. ¶ 4). Plaintiffs provide no evidence to support their position, however, and under undisputed guidelines outlined by Defendants, Plaintiffs' memo to the Warden does not constitute a grievance under the prison's policy. Plaintiffs failed to exhaust their administrative remedies. There are no material facts in dispute, and Defendants are entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c).

IV. Summary.

The Court **grants** the motion for summary judgment filed by Defendants Walter Kautzky and John Mathes (Clerk's No. 57). The Court directs the Clerk of Court to enter judgment in favor of Defendants and against Plaintiffs William Stringer and Michael McBride. Plaintiffs' case is **dismissed without prejudice** for failure to exhaust under 42 U.S.C. § 1997e(a).

IT IS SO ORDERED.

Dated this 25th day of January, 2006.

JAMES E. GRITZNER, JUDGE
UNITED STATES DISTRICT COURT