

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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|-----------------------|---|----------------------------------|
| DUANE ZIEMBA, | : | |
| Plaintiff, | : | |
| | : | PRISONER |
| v. | : | CASE NO. 3:10-cv-717 (SRU) (WIG) |
| | : | |
| ANN E. LYNCH, et al., | : | |
| Defendants. | : | |

RULING AND ORDER

The plaintiff has filed motions asking the court not to consider the defendants' motion to dismiss because the defendants attached twelve exhibits to their motion and seeking an extension of time to respond to the motion to dismiss. For the reasons that follow, the plaintiff's motions are denied.

The plaintiff is correct that, when reviewing a motion to dismiss filed pursuant to Rule 12(b)(6), Fed. R. Civ. P., the court considers only the allegations of the complaint, any document attached to the complaint or relied on by the plaintiff, and other facts of which judicial notice may be taken. *See Samuels v. Air Transport Local 504*, 992 F.2d 12, 15 (2d Cir. 1993).

However, only two of the five grounds included in the motion to dismiss rely on Rule 12(b)(6). The remaining grounds seek dismissal as a sanction for litigation abuses. The defendants have not presented any evidence in connection with their requests to dismiss pursuant to Rule 12(b)(6), and do not ask the court to consider any matter beyond the amended complaint when reviewing these grounds to dismiss. Thus, the court need not treat the motion to dismiss as a motion for summary judgment, as permitted under Rule 12(d), Fed. R. Civ. P.

Courts customarily conduct evidentiary hearings when considering a motion for sanctions

