

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

RONALD WARD,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:16-cv-43
)	
DAVID GLADIEUX,)	
)	
Defendant.)	

OPINION & ORDER

Plaintiff Ronald Ward was an inmate of the Allen County Jail between an unspecified date and October 12, 2016. (DE 32; DE 45.) He brings this putative class action seeking declaratory and injunctive relief and alleging that the jail violated his and other inmates' due process rights to access the courts by failing to maintain a law library or provide legal research materials or representation for civil rights and habeas corpus cases. (DE 32.) He moves for certification of a proposed class of inmates (DE 33), but, because he is no longer a member of the putative class, the motion must be denied.

Background

Allen County Jail is located in Fort Wayne, Indiana and houses pretrial detainees and inmates who have been sentenced to a term of imprisonment. The jail has no physical law library, but inmates who need legal materials can request them by submitting an "Inmate Request Form" indicating the need for such materials and providing legal citations to the materials requested. (*See* 32 at 5-6; *see also, e.g.*, DE 32 at 32.) Ward alleges that a jail employee will then print the legal material only if the

requesting inmate has funds available in his account. (DE 32 at 6.)

On December 31, 2015, Ronald Ward submitted such an Inmate Request Form, stating “I would like access to the Law Library so I can do some research on my case.” (DE 32 at 32.) He received a written response that read: “What kind of info are you requesting? Otherwise, utilize your attorney/public defender.” (*Id.*) On January 22, 2016, Ward sent a second Inmate Request Form, which stated:

I am a[n] indigent inmate here at the Allen County Jail. . . I need the appropriate forms to proceed as a poor person on a civil matter, to deny me of the appropriate forms or person adequately trained to help me proceed would be denying me of my constitutional rights. Please promptly provide a response to my request.

(*Id.* at 33.) The response he received to his second request read just: “What are needing?” (*Id.*)

At least one other inmate at the Allen County made similarly unsuccessful (and even more frustrating) attempts to gain access to legal materials for civil matters. That inmate, Gary Burt, filed seven requests for access to a law library or for legal materials between January 21, 2016 and February 10, 2016, each time receiving what can only arguably be described as a response and only learning after his sixth and seventh inquiries that he had to provide specific legal citations and that there was no physical library. (*See id.* at 21-27.)

Ward moves to certify the following proposed class:

All unrepresented indigent inmates incarcerated at the Allen County Jail who seek to bring nonfrivolous civil rights or

habeas corpus claims, are not represented by counsel for those claims, and are prevented from bringing those actions claims in court or have had their claims dismissed due to a lack of access to a law library, legal research materials, or professional legal assistance.

(DE 32 at 3.)

Discussion

Ward argues that the proposed class should be certified because it is identifiable by reference to objective criteria and satisfies the requirements of Rule 23.(DE 33 at 4-5.) The jail counters that the class is too vaguely defined to be certified and that identifying its members would require “an individualized determination on the merits of each and every potential class member’s underlying ‘nonfrivolous civil rights or habeas corpus claim’[.]” (DE 35 at 4.)

Neither party has addressed the most pressing issue – whether Ward has standing, given his release from Allen County Jail on October 12, 2016. (See DE 45; DE 48.) But this is unsurprising since his release from custody post-dates the briefing in this matter. Standing is “an essential and unchanging part of the case-or-controversy requirement of Article III” of the U.S. Constitution. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). “To have standing to sue as a class representative it is essential that a plaintiff must be a part of that class, that is, he must possess the same interest and suffer the same injury shared by all members of the class he represents.” *Keele v. Wexler*, 149 F.3d 589, 592 (7th Cir. 1998) (internal quotation marks and citation omitted); see also *Brandon v. 3PD, Inc.*, No. 13-cv-3745, 2014 WL 11348998, at *7 (N.D. Ill. Aug. 6, 2014)

(noting several bases for requiring that a representative be a member of the putative class, including standing and Rule 23's typicality and adequacy requirements).

As presently defined, the putative class includes only current inmates. (DE 32 at 3.) That means that, although Ward was a member of the proposed class when the second amended class action complaint was filed, he hasn't been one since he was released from the jail. And "[a]lthough he is subject to recommitment for future misbehavior, that possibility [is] insufficient to satisfy Article III[.]" See *Nelson v. Murphy*, 44 F.3d 497, 500 (7th Cir. 1995) (citing *Weinstein v. Bradford*, 423 U.S. 147 (1975); *Muphy v. Hunt*, 455 U.S. 478 (1982)). Ward's own claim for declaratory and injunctive relief from the jail's law library procedures is moot, and he no longer has standing to represent the class that he proposes.

The motion will be therefore be denied, and I will set a telephonic hearing in this matter to hear from the parties on what, if anything, should happen next on this case. The Court apologizes to the parties for its less than expeditious disposition of this motion, but until the issue of the filing fee was resolved on January 17, 2017, the court could not act on the motion.

Conclusion

Accordingly, Ward's Motion for Class Certification (DE 33) is **DENIED**, and this matter is now set for a telephonic hearing on Thursday, March 9, 2017, at 10:00 a.m. Central/Hammond Time.

SO ORDERED.

Entered: March 2, 2017.

s/ Philip P. Simon
JUDGE, UNITED STATES DISTRICT COURT