

**U.S. District Court
Western District of Wisconsin (Madison)
CIVIL DOCKET FOR CASE #: 3:14-cv-00481-jdp**

Tonn, Dennis v. Dittmann, Michael et al
Assigned to: District Judge James D. Peterson
Referred to: Magistrate Judge Stephen L. Crocker
Case in other court: Seventh Circuit Court of Appeals,
14-03780

Date Filed: 07/02/2014
Date Terminated: 12/07/2015
Jury Demand: None
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: Federal Question

Cause: 42:1983 Prisoner Civil Rights

Plaintiff

Dennis Tonn

represented by **Dennis Tonn**
175958
Stanley Correctional Institution
100 Corrections Dr.
Stanley, WI 54768-6500
PRO SE

V.

Defendant

Michael A. Dittmann
TERMINATED: 07/28/2015

represented by **Corey Francis Finkelmeyer**
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707
(608) 266-7342
Fax: (608) 267-8906
Email: federalorderscl@doj.state.wi.us
TERMINATED: 08/10/2015
LEAD ATTORNEY

Defendant

Michael Meisner

represented by **Rebecca Ann Paulson**
Department of Justice
17 West Main Street
Madison, WI 53702
608-266-0278
Email: paulsonra@doj.state.wi.us
ATTORNEY TO BE NOTICED

Defendant

Edward F. Wall
TERMINATED: 07/28/2015

Defendant

Sandy Hautamaki
TERMINATED: 07/28/2015

Defendant

David Melby

represented by **Rebecca Ann Paulson**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Morgan

represented by **Rebecca Ann Paulson**
(See above for address)

Defendant

Mary Leiser

represented by **Rebecca Ann Paulson**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Janel Nickel

TERMINATED: 07/28/2015

Defendant

Wis. Dept. of Corrections

TERMINATED: 07/28/2015

Date Filed	#	Docket Text
07/02/2014	<u>1</u>	COMPLAINT against All Defendants, filed by Dennis Tonn. (Case randomly assigned to District Judge James D. Peterson.) (Attachments: # <u>1</u> Cover Letter, # <u>2</u> Envelope) (jef) (Entered: 07/02/2014)
07/02/2014	<u>2</u>	Motion to stay or hold in abeyance restitution, by Plaintiff Dennis Tonn. (jef),(ps) (Entered: 07/02/2014)
07/02/2014	<u>3</u>	Motion for Assistance in Recruiting Counsel by Plaintiff Dennis Tonn. (jef),(ps) (Entered: 07/02/2014)
07/02/2014	<u>4</u>	Motion for Use of Release Account Funds by Plaintiff Dennis Tonn. (jef),(ps) (Entered: 07/02/2014)
07/02/2014	<u>5</u>	Motion for Leave to Proceed in forma pauperis by Plaintiff Dennis Tonn. (jef),(ps) (Entered: 07/02/2014)
07/02/2014	<u>6</u>	Prisoner Trust Fund Account Statement by Plaintiff Dennis Tonn. (jef),(ps) (Additional attachment(s) added on 7/3/2014: # <u>1</u> IPP Calculation) (jef). (Entered: 07/02/2014)
07/03/2014	<u>7</u>	ORDER on ifp request: Initial partial filing fee of \$ 242.13 assessed. (Initial partial filing fee due 7/24/2014.) Plaintiff's <u>4</u> motion for use of release account funds to pay the filing fee is denied. Signed by Magistrate Judge Peter A. Oppeneer on 7/3/2014. (jef),(ps) (Entered: 07/03/2014)
07/14/2014		Full Filing fee received: \$ 350.00, receipt number 34690020658. (jef),(ps) (Entered: 07/14/2014)
10/22/2014	<u>8</u>	Letter Requesting Status Update by Plaintiff Dennis Tonn. (Attachments: # <u>1</u> Envelope) (nln),(ps) (Entered: 10/22/2014)
10/24/2014	<u>9</u>	Letter from Clerk's Office in response to <u>8</u> letter requesting status update by Plaintiff Dennis Tonn. (nln),(ps) (Entered: 10/24/2014)
12/12/2014	<u>10</u>	ORDER that this case is DISMISSED, with prejudice, for failure to state a claim upon which relief can be granted. Plaintiff's <u>2</u> "motion to stay or hold in abeyance restitution" is DENIED as moot. Plaintiff's <u>3</u> "motion for appointment of counsel" is DENIED as moot. A strike will be recorded against plaintiff, pursuant to 28 U.S.C. § 1915(g). The clerk of court is directed to close this case. Signed by District Judge James D. Peterson on 12/12/2014. (nln),(ps) (Entered: 12/12/2014)
12/12/2014	<u>11</u>	JUDGMENT entered in favor of defendants dismissing this case with prejudice for failure to state a claim upon which relief can be granted. (PAO/nln). (nln),(ps) (Entered: 12/12/2014)
12/24/2014	<u>12</u>	NOTICE OF APPEAL by Plaintiff Dennis Tonn as to <u>10</u> Order, <u>11</u> Judgment. In forma pauperis pending. No Docketing Statement filed. (Attachments:

		# <u>1</u> Cover Letter, # <u>2</u> Envelope) (jef),(ps) (Entered: 12/24/2014)
12/24/2014	<u>13</u>	Motion for Certificate of Appealability by Plaintiff Dennis Tonn. (jef),(ps) (Entered: 12/24/2014)
12/24/2014	<u>14</u>	Appeal Information Packet. (jef),(ps) (Entered: 12/24/2014)
12/24/2014	<u>15</u>	Transmission of Notice of Appeal, Docket Sheet and Judgment to Seventh Circuit Court of Appeals re <u>12</u> Notice of Appeal. (Attachments: # <u>1</u> Order, # <u>2</u> Judgment, # <u>3</u> Docket sheet) (jef),(ps) (Entered: 12/24/2014)
12/29/2014		USCA Case Number 14-3780 for <u>12</u> Notice of Appeal filed by Dennis Tonn. (nlm),(ps) (Entered: 12/29/2014)
12/30/2014	<u>16</u>	Transcript Request Form by Plaintiff Dennis Tonn re <u>12</u> Notice of Appeal. (Attachments: # <u>1</u> Envelope) (nlm),(ps) (Entered: 12/30/2014)
12/30/2014	<u>17</u>	Court Reporter Certification of Seventh Circuit Transcript Information Sheet re <u>12</u> Notice of Appeal. (jef),(ps) (Entered: 12/30/2014)
01/06/2015	<u>18</u>	ORDER Construing Notice of Appeal as Request to Proceed ifp. Leave to proceed ifp denied. Signed by District Judge James D. Peterson on 1/6/2015. (jef),(ps) (Entered: 01/06/2015)
01/06/2015	<u>19</u>	Appeal Warden PLRA Letter. (jef),(ps) (Entered: 01/06/2015)
01/16/2015	<u>20</u>	Certified and Transmitted Record on Appeal to US Court of Appeals re <u>12</u> Notice of Appeal. (Attachments: # <u>1</u> Certification) (nlm),(ps) (Entered: 01/16/2015)
02/23/2015	<u>21</u>	Letter regarding appeal fee from Dennis Tonn. (Attachments: # <u>1</u> Envelope) (jef),(ps) (Entered: 02/24/2015)
02/24/2015		USCA Appeal Fees received: Total amount received \$ 504.28; receipt numbers 34690022210 (\$40.80) and 34690022353 (\$463.48) re <u>12</u> Notice of Appeal filed by Dennis Tonn. Remainder of \$0.72 of the \$505 debt is still owed. (jef/cc: Seventh Circuit via nef),(ps) (Entered: 02/24/2015)
03/02/2015		USCA Appeal Fees received \$ 0.72 receipt number 34690022403 re <u>12</u> Notice of Appeal filed by Dennis Tonn. Dennis Tonn's appellate fee of \$505 is now paid in full. (jef/cc: Seventh Circuit via nef),(ps) (Entered: 03/02/2015)
03/09/2015	<u>22</u>	Notice of Change of Address by Plaintiff Dennis Tonn. (Attachments: # <u>1</u> Address information, # <u>2</u> Envelope) (jef),(ps) (Entered: 03/09/2015)
07/20/2015	<u>23</u>	JUDGMENT from USCA vacating and remanding the dismissal of plaintiff/Appellant's due process claim to District Court as to <u>12</u> Notice of Appeal filed by Dennis Tonn. No record to be returned. (Attachments: # <u>1</u> Appellate Opinion, # <u>2</u> Mandate) (elc),(ps) (Entered: 07/20/2015)
07/20/2015		Motion for In Forma Pauperis Screening (due process restitution claims per remand). (elc),(ps) (Entered: 07/20/2015)
07/28/2015	<u>24</u>	ORDER on Leave to Proceed: Plaintiff granted leave to proceed against Defendants David Melby, Mary Leiser, Donald Morgan, Michael Meisner. Leave to proceed denied and case dismissed against Janel Nickel, Edward F. Wall, Wis. Dept. of Corrections, Michael A. Dittmann and Sandy Hautamaki. Materials delivered to DOJ for acceptance of service. The "strike" under 28 U.S.C. § 1915(g) that the court recorded against plaintiff in its order dated December 12, 2014, is rescinded. Signed by District Judge James D. Peterson on 7/28/2015. (jef),(ps) (Entered: 07/28/2015)
08/07/2015	<u>25</u>	Notice of Appearance filed by Rebecca Ann Paulson for Defendants Mary Leiser, Michael Meisner, David Melby, Donald Morgan. (Attachments:

		# <u>1</u> Certificate of Service) (Paulson, Rebecca),(ps) (Entered: 08/07/2015)
08/07/2015	<u>26</u>	Acceptance of Service by DOJ on behalf of Defendants Mary Leiser, Michael Meisner, David Melby, Donald Morgan. (Paulson, Rebecca),(ps) (Entered: 08/07/2015)
08/10/2015	<u>27</u>	Notice that for the remainder of this lawsuit plaintiff need only send a copy of his filings in this case to the court pursuant to an informal service agreement with the Wisconsin Department of Justice. (elc),(ps) (Entered: 08/10/2015)
08/24/2015	<u>28</u>	Motion for Reconsideration re <u>24</u> Order on Leave to Proceed – dismissing four defendants by Plaintiff Dennis Tonn. (Attachments: # <u>1</u> Cover Letter and Envelope) (elc),(ps) (Entered: 08/24/2015)
08/24/2015	<u>29</u>	Motion for Assistance in Recruiting Counsel by Plaintiff Dennis Tonn. (elc),(ps) (Entered: 08/24/2015)
08/26/2015	<u>30</u>	ORDER denying <u>28</u> Motion for Reconsideration; denying without prejudice <u>29</u> Motion for Assistance in Recruiting Counsel. Signed by District Judge James D. Peterson on 8/26/2015. (jef),(ps) (Entered: 08/26/2015)
08/31/2015	<u>31</u>	Discovery Request/Request for Production of Documents by Plaintiff Dennis Tonn. (Attachments: # <u>1</u> Envelope) (elc),(ps) (Entered: 08/31/2015)
08/31/2015	<u>32</u>	Letter from clerk's office in response to <u>31</u> Discovery Request/Request for Production of Documents. (elc),(ps) (Entered: 08/31/2015)
09/01/2015	<u>33</u>	ANSWER by Defendants Mary Leiser, Michael Meisner, David Melby, Donald Morgan. (Attachments: # <u>1</u> Certificate of Service, # <u>2</u> renumbered complaint) (Paulson, Rebecca),(ps) (Entered: 09/01/2015)
09/01/2015		Set Telephone Pretrial or Status Conference: Telephone Pretrial Conference set for 9/22/2015 at 02:30 PM before Magistrate Judge Stephen L. Crocker. Counsel for Defendant responsible for setting up the call to chambers at (608) 264-5153. [Notice Regarding the Telephone Preliminary Pretrial Conference attached] (jef),(ps) (Entered: 09/01/2015)
09/02/2015	<u>34</u>	MOTION FOR SUMMARY JUDGMENT <i>For Failure to Exhaust Administrative Remedies</i> by Defendants Mary Leiser, Michael Meisner, David Melby, Donald Morgan. (Attachments: # <u>1</u> Certificate of Service) (Paulson, Rebecca),(ps) (Entered: 09/02/2015)
09/02/2015	<u>35</u>	Brief in Support of <u>34</u> Motion for Summary Judgment <i>Brief in Support of Defendant's Motion for Summary Judgment For Failure to Exhaust Administrative Remedies</i> by Defendants Mary Leiser, Michael Meisner, David Melby, Donald Morgan (Paulson, Rebecca),(ps) (Entered: 09/02/2015)
09/02/2015	<u>36</u>	Proposed Findings of Fact filed by Defendants Mary Leiser, Michael Meisner, David Melby, Donald Morgan re: <u>34</u> Motion for Summary Judgment (Paulson, Rebecca),(ps) (Entered: 09/02/2015)
09/02/2015	<u>37</u>	Declaration of Welcome Rose filed by Defendants Mary Leiser, Michael Meisner, David Melby, Donald Morgan re: <u>34</u> Motion for Summary Judgment (Attachments: # <u>1</u> Exhibit 100 – inmate complaint history report, # <u>2</u> Exhibit 101 – CCI-2014-7263, # <u>3</u> Exhibit 102 – CCI-2014-7266, # <u>4</u> Exhibit 103 – August 2013 return letter, # <u>5</u> Exhibit 104 – April 2014 return letter) (Paulson, Rebecca),(ps) (Entered: 09/02/2015)
09/02/2015	<u>38</u>	Declaration of Lynn Washetas filed by Defendants Mary Leiser, Michael Meisner, David Melby, Donald Morgan re: <u>34</u> Motion for Summary Judgment (Attachments: # <u>1</u> Exhibit 105 – CR 2211298) (Paulson, Rebecca),(ps) (Entered: 09/02/2015)
09/02/2015	<u>39</u>	Motion to Stay <i>Discovery on the Merits Pending Resolution of Defendants' Motion for Summary Judgment for Failure to Exhaust Administrative Remedies</i> by Defendants Mary Leiser, Michael Meisner, David Melby, Donald Morgan. (Paulson, Rebecca),(ps)

		(Entered: 09/02/2015)
09/04/2015		Set Briefing Deadlines as to Defendants' <u>34</u> MOTION FOR SUMMARY JUDGMENT For Failure to Exhaust Administrative Remedies. Plaintiff's Brief in Opposition due 9/25/2015. Defendants' Brief in Reply due 10/2/2015. (jef),(ps) (Entered: 09/04/2015)
09/04/2015	<u>40</u>	** TEXT ONLY ORDER ** Pursuant to <i>Pavey v. Conley</i> , 544 F.3d 739, 742 (7th Cir. 2008), <i>as amended on denial of reh'g and reh'g en banc</i> , (Sept. 12, 2008), defendants' motion to stay discovery until I resolve the issue of whether plaintiff exhausted his administrative remedies, Dkt. <u>39</u> , is GRANTED. Discovery on the merits will not begin until after I rule on defendants' motion for summary judgment. Signed by District Judge James D. Peterson on 9/4/2015. (jef),(ps) (Entered: 09/04/2015)
09/08/2015	<u>41</u>	Notice of United States Constitutional Alert by Plaintiff Dennis Tonn. (Attachments: # <u>1</u> Envelope) (elc),(ps) (Entered: 09/08/2015)
09/14/2015	<u>42</u>	Motion to Amend Request for Relief re: <u>1</u> Complaint by Plaintiff Dennis Tonn. (Attachments: # <u>1</u> Cover Letter, # <u>2</u> Envelope) (nlm),(ps) Modified docket text on 9/15/2015 (elc). (Entered: 09/14/2015)
09/17/2015	<u>43</u>	Brief in Opposition / reply brief filed by Plaintiff Dennis Tonn re: <u>34</u> Motion for Summary Judgment for Failure to Exhaust filed by Mary Leiser, David Melby, Morgan, Michael Meisner. (Attachments: # <u>1</u> Envelope) (nlm),(ps) (Entered: 09/17/2015)
09/17/2015	<u>44</u>	Brief in Opposition by Plaintiff Dennis Tonn re: <u>34</u> Motion for Summary Judgment for Failure to Exhaust filed by Mary Leiser, David Melby, Morgan, Michael Meisner. (Attachments: # <u>1</u> Cover Letter, # <u>2</u> Envelope) (nlm),(ps) (Entered: 09/17/2015)
09/18/2015	<u>45</u>	Letter from clerk's office in response to cover letter filed with <u>44</u> Brief in Opposition. (elc),(ps) (Entered: 09/18/2015)
09/22/2015		Minute Entry for proceedings held before Magistrate Judge Stephen L. Crocker: Telephone Preliminary Pretrial Conference – Pro Se held on 9/22/2015 [:30] (skv),(ps) (Entered: 09/22/2015)
09/25/2015	<u>46</u>	Brief in Reply by Defendants Mary Leiser, Michael Meisner, David Melby, Morgan in Support of <u>34</u> Motion for Summary Judgment for Failure to Exhaust, (Attachments: # <u>1</u> Wis. Admin. Code sec. DOC 303.57(3) – December 2006 version, # <u>2</u> Certificate of Service) (Paulson, Rebecca),(ps) Modified on 9/25/2015. (lak) (Entered: 09/25/2015)
09/29/2015	<u>47</u>	Pretrial Conference Order – Dispositive Motions due 4/29/2016. Rule 26(a)(3) Disclosures and all motions in limine due 10/14/2016. Objections due 10/28/2016. Final Pretrial Conference set for 11/14/2016 at 08:30 AM. Jury Selection and Trial set for 11/14/2016 at 09:00 AM. Signed by Magistrate Judge Stephen L. Crocker on 9/23/2015. (jef),(ps) (Entered: 09/29/2015)
09/30/2015	<u>48</u>	ORDER that plaintiff Dennis Tonn may have until October 23, 2015, to file a supplemental brief in opposition to defendants' motion for summary judgment. Defendants' reply, if any, will be due by October 30, 2015. Signed by Magistrate Judge Stephen L. Crocker on 9/30/2015. (jef),(ps) (Entered: 09/30/2015)
10/07/2015	<u>49</u>	Brief in Opposition by Plaintiff Dennis Tonn re: <u>34</u> Motion for Summary Judgment for Failure to Exhaust filed by Mary Leiser, David Melby, Morgan, Michael Meisner. (Attachments: # <u>1</u> Exhibit A – Defendants' Certificate of Service (dkt. # <u>34</u> –1, # <u>2</u> Envelope) (nlm),(ps) (Entered: 10/07/2015)
10/26/2015	<u>50</u>	Second Brief in Reply by Defendants Mary Leiser, Michael Meisner, David Melby, Morgan in Support of <u>34</u> Motion for Summary Judgment for Failure to Exhaust, (Attachments:

		# <u>1</u> Certificate of Service) (Paulson, Rebecca),(ps) Modified on 10/27/2015. (lak) (Entered: 10/26/2015)
11/23/2015	<u>51</u>	Notice of Change of Address and Request for Status Update by Plaintiff Dennis Tonn. (Attachments: # <u>1</u> Certificate of Service, # <u>2</u> Envelope) (nln),(ps) (Entered: 11/23/2015)
11/25/2015	<u>52</u>	Letter from Clerk's Office in response to plaintiff's <u>51</u> request for status update. (nln),(ps) (Entered: 11/25/2015)
12/07/2015	<u>53</u>	ORDER granting <u>34</u> Motion for Summary Judgment for Failure to Exhaust, dismissing this case without prejudice; and denying as moot <u>42</u> Motion to Amend Complaint. The clerk of court is directed to enter judgment in favor of defendants and close this case. Signed by District Judge James D. Peterson on 12/7/2015. (jef),(ps) (Entered: 12/07/2015)
12/07/2015	<u>54</u>	JUDGMENT entered in favor of Defendants dismissing this case without prejudice. (PAO/jef). (jef),(ps) (Entered: 12/07/2015)
12/14/2015	<u>55</u>	Submission by Dennis Tonn (Motion for counsel). (Attachments: # <u>1</u> Jury demand, # <u>2</u> Certificate of Service, # <u>3</u> Envelope) (jef),(ps) (Entered: 12/14/2015)
12/14/2015	<u>56</u>	Letter from Clerk's Office regarding plaintiff's <u>55</u> submission. (jef),(ps) (Entered: 12/14/2015)
12/28/2015	<u>57</u>	Motion for Reconsideration re <u>53</u> Order by Plaintiff Dennis Tonn. (Attachments: # <u>1</u> Certificate of Service, # <u>2</u> Envelope) (elc),(ps) (Entered: 12/28/2015)
12/28/2015		Set Deadlines as to <u>57</u> Motion for Reconsideration re <u>53</u> Order. Defendants' Brief in Opposition due 1/19/2016. Plaintiff's Brief in Reply due 1/29/2016. (elc),(ps) (Entered: 12/28/2015)
12/30/2015	<u>58</u>	NOTICE OF APPEAL by Plaintiff Dennis Tonn as to <u>54</u> Judgment, <u>53</u> Order. In forma pauperis pending. Docketing Statement filed. (Attachments: # <u>1</u> Docketing Statement, # <u>2</u> Docket sheet, # <u>3</u> Cover Letter, # <u>4</u> Envelope) (jef),(ps) (Entered: 12/30/2015)
12/30/2015	<u>59</u>	Motion for Certificate of Appealability by Plaintiff Dennis Tonn. (jef),(ps) (Entered: 12/30/2015)
12/30/2015	<u>60</u>	Appeal Information Packet. (jef),(ps) (Entered: 12/30/2015)