

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

DAVID ALLEN BELANGER,                    )  
  )  
                          Plaintiff                    )  
  )  
v.    )       Civil No. 95-0074-P-C  
  )  
JAMES CLEMONS, et al.,                 )  
  )  
                          Defendants                )

***RECOMMENDED DECISION***

Pending before the Court is Defendant Hayden Boullie's Motion for Summary Judgment, filed December 29, 1995. The remaining Defendants were dismissed pursuant to the Order Affirming the Recommended Decision on Defendants' Motion to Dismiss, filed December 12, 1995.

Plaintiff's claim is that he was deprived of his right to due process by Defendant Boullie's failure to provide him adequate notice of a pending disciplinary proceeding against him while he was an inmate at the Maine State Prison. Specifically, Plaintiff alleges that he was notified of the pending charges on the same day as the disciplinary hearing, and that Defendant Boullie changed the date on the disciplinary report to cover the error.

***Discussion***

Summary judgment is appropriate only 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 judgment as a matter of law." Fed. R. Civ. P. 56(c). "A material fact is one which has the 'potential to affect the outcome of the suit under applicable law.'" *FDIC v. Anchor Properties*, 13 F.3d 27, 30 (1st Cir. 1994) (quoting *Nereida-Gonzalez v. Tirado-Delgado*, 990 F.2d 701, 703 (1st Cir. 1993)). The Court views

the record on summary judgment in the light most favorable to the nonmovant. *Levy v. FDIC*, 7 F.3d 1054, 1056 (1st Cir. 1993).

However, summary judgment is appropriate "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Once the moving party has presented evidence of the absence of a genuine issue, the nonmoving party must respond by "placing at least one material fact in dispute." *Anchor Properties*, 13 F.3d at (citing *Darr v. Muratore*, 8 F.3d 854, 859 (1st Cir. 1993)). In this case, Plaintiff responded to the Motion for Summary Judgment, but did not include a Statement of Material Facts which are in dispute, as required by Local Rule 19. Accordingly, we will examine the merits of Defendant's Motion for Summary Judgment based on Defendant's Statement of Material Facts, which are as follows.

### ***Statement of Fact***

Defendant Boullie was the chairperson of the Disciplinary Board assigned to hold a disciplinary hearing regarding the Plaintiff for an incident that occurred on November 24, 1994. When he reviewed the incident report and preliminary investigation report, he knew that, pursuant to Department of Corrections policy, the investigator had read the incident report to Plaintiff and had asked him if he wished to make a statement. Defendant Boullie saw that this had occurred on November 28, 1994, and that Plaintiff had indeed made a signed statement, in which he had stated that the incident report was true, and denied knowing that there was stolen food in his possession.

On the afternoon of December 14, 1994, one day after Defendant Boullie received the incident and preliminary investigation reports, he brought copies of them to the Plaintiff, along with

the notification of the disciplinary hearing form, with only the top section filled out. Defendant told Plaintiff what the disciplinary charge was and asked if Plaintiff was familiar with the incident. Defendant explained the possible dispositions for the charge, and explained Plaintiff's options on the form. Defendant asked Plaintiff to choose one of the two options, and Plaintiff chose the option wherein he waived his right to a formal disciplinary hearing on 24-hour notice, and agreed to have the ultimate finding made by Defendant Boullie on the basis of the incident and preliminary investigation reports. Plaintiff clearly indicated he understood the option he had chosen, and Defendant Boullie would have permitted him to change his mind at any time. Defendant Boullie asked Plaintiff if it would be acceptable to have the review that afternoon, and Plaintiff consented.

### *Legal Discussion*

As the Court noted in its Recommended Decision on the Motion to Dismiss, it has long been clear that an inmate is not entitled to the same level of procedural protection as would be required in the original criminal prosecution. *Hewitt v. Helms*, 459 U.S. 460, 472 (1983).<sup>1</sup> In all, Plaintiff was entitled to “advance written notice of the claimed violation and written statement of the factfinders as to the evidence relied upon and the reasons for the disciplinary action taken.” *Wolff v. McDonnell*, 418 U.S. 539, 563 (1974). The Supreme Court has expressly approved 24-hour notice of such a hearing. *Id.* at 564.

In this case, Plaintiff waived his opportunity for a formal hearing, and agreed to have the informal review conducted that afternoon. Plaintiff did not express reservations about these

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<sup>1</sup> This discussion assumes Plaintiff had a liberty interest in the disciplinary hearing, a legal conclusion which Defendant disputes, but which was not raised in the Motion for Summary Judgment.

decisions, or Defendant would have permitted him to change his mind. On this factual record, Defendant is entitled to judgment as a matter of law.

*Conclusion*

For the foregoing reasons, I hereby recommend Defendant Boullie's Motion for Summary Judgment be GRANTED.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

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Eugene W. Beaulieu  
United States Magistrate Judge

Dated in Bangor, Maine on May 9, 1996.