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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ANTHONY D. AMAKER, 89T2815,

Plaintiff,

vs.

BRIAN FISCHER, et. al.

Defendants.

Docket No: 07 CV 0279

NOTICE OF MOTION TO MODIFY ORDER

MOTION BY:

Defendants

RELIEF SOUGHT:

Modification of Order (FRCP 60[b][6]), and
for such other, further and different relief as
the Court may deem just.

WHEN RETURNABLE:

As determined by the Court.

PLACE RETURNABLE:

Hon. H. Kenneth Schroeder, Jr
U.S. Courthouse
68 Court Street
Buffalo, New York (on papers, unless
otherwise directed by the Court)

SUPPORTING PAPERS:

Declaration of George Michael Zimmermann

DATED: Buffalo, New York
October 27, 2010

ANDREW M. CUOMO
Attorney General of the State of New York
Attorney for Defendants

BY:

/s/ George Michael Zimmermann
GEORGE MICHAEL ZIMMERMANN
Assistant Attorney General of Counsel
Main Place Tower, Suite 300A
350 Main Street
Buffalo, NY 14202
(716) 853-8444
George.Zimmermann@ag.ny.gov

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2010, I electronically filed the Notice of Motion and Declaration of George Michael Zimmermann, in the above, with the Clerk of the District Court using its CM/ECF system.

And, I hereby certify that on October 27, 2010, I mailed the foregoing by the United States Postal Service, to the following non-CM/ECF participant:

Anthony D. Amaker
89-T-2815
Attica Correctional Facility
Box 149
Attica, NY 14011

DATED: Buffalo, New York
October 27, 2010

/s/ George Michael Zimmermann
GEORGE MICHAEL ZIMMERMANN
Assistant Attorney General of Counsel
Main Place Tower, Suite 300A
350 Main Street
Buffalo, NY 14202
(716) 853-8444
George.Zimmermann@ag.ny.gov

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ANTHONY D. AMAKER, 89T2815,

Plaintiff,

vs.

BRIAN FISCHER, et. al.

Defendants.

**ZIMMERMANN
DECLARATION**

Docket No: 07-CV-0279

GEORGE MICHAEL ZIMMERMANN declares under penalty of perjury that the following is true and correct:

1. I am an Assistant Attorney General, of counsel to Andrew M. Cuomo, New York State Attorney General, counsel for defendants.
2. This declaration is submitted in support of the defendants' motion pursuant to Federal Rules of Civil Procedure Rule 60 (b)(6), to Modify the Court's Order of July 20, 2010 (Doc. No. 95; hereinafter "the Order"), which directed the defendants to retained the plaintiff's excess legal materials "in a secure location at the facility in which plaintiff is housed until plaintiff's appeal is resolved."
3. The defendants request that the Court modify the Order, to direct that the plaintiff's excess legal remain in their secure location at Southport, until further order of the Court. The basis of this request is the belief that this is safest way to insure that the materials remain extant, and are not lost or disturbed.
4. From the date of the Order until yesterday, the plaintiff was housed at the Southport Correctional Facility. He had been at Southport since he made is initial Motion for a Preliminary Injunction (Doc. No. 77), the appeal of which is mentioned in the Order.

5. Southport is a Special Housing Unit Facility ("SHU") and is specifically reserved for inmates serving disciplinary time in SHU.
6. Yesterday the plaintiff was transferred to Attica Correctional Facility, having served his full SHU time.
7. Pursuant to the Order, the plaintiff's excess legal materials should be sent to Attica, and held in a secure location there.
8. However, it is the defendants' position that the best way to guarantee that the plaintiff's excess legal materials remain undisturbed, until the plaintiff's appeal is disposed of, is for them to remain at Southport.
9. Michael Sheahan, Southport's Deputy Superintendant for Security, submitted a declaration in opposition to that Motion and is deeply familiar with the circumstances of the Court's decisions regarding the plaintiff's legal materials. I have discussed the issue with him several times over the last few months.
10. DSS Sheahan has personally directed the handling of the plaintiff's legal materials, and insured that the excess legal materials are secured at Southport. Should these materials be sent to Attica, personnel who are unfamiliar with the issues at hand would be responsible for receiving and securing these items. Further, there is no guarantee that the plaintiff will remain at Attica for any length of time. Should the plaintiff be transferred to a new facility, the materials, and the Court's Order regarding them, would have to be transferred again.
11. While the undersigned is in no way arguing that the defendants would not obey the Court's direction, basic human nature would indicate that each time the plaintiff's excess legal materials are moved, the chances for mishap increase.

12. Therefore, the defendants request that the Court modify the Order, to direct that the plaintiff's excess legal materials be retained in a secure location at Southport Correctional Facility until plaintiff's appeal is resolved, or until further order of the Court.

WHEREFORE, the undersigned requests that this Court modify its Order of July 20, 2010, to direct that the plaintiff's excess legal materials be retained in a secure location at Southport Correctional Facility until plaintiff's appeal is resolved, or until further order of the Court, and grant such other, further and different relief as the Court may deem just.

DATED: Buffalo, New York
October 27, 2010

/s/ George Michael Zimmermann
GEORGE MICHAEL ZIMMERMANN
Assistant Attorney General of Counsel
Main Place Tower, Suite 300A
350 Main Street
Buffalo, NY 14202
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