

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MARGE JARRELLS,

Plaintiff,

v.

SELECT PUBLISHING,

Defendant.

ORDER

00-C-433-C

In an order entered herein on May 4, 2001, I granted defendant's motion to dismiss and dismissed plaintiff's complaint without prejudice to her filing an amended complaint that cured the fatal defects in her first complaint. Specifically, I allowed plaintiff until May 21, 2001, in which to serve and file an amended complaint in which she 1) names Select Publishing, Inc. as a defendant rather than Select Publishing, 2) alleges affirmatively that she had received a right to sue letter from the EEOC on her Title VII claim and that she had filed a charge of age discrimination with the EEOC 60 days before filing this lawsuit, and 3) states her age and race.

In response to the order of May 4, 2001, plaintiff has filed a document dated May 21, 2001, and copies of two letters she received from the Equal Employment Opportunity Commission. These documents cannot stand on their own as plaintiff's amended complaint,

because they are not in the form of pleadings required under Fed. R. Civ. P. 10. Specifically, plaintiff has not prepared a caption setting out the name of the court, the title of the action, the file number and the designation of the pleading, and she has not made her allegations of fact in numbered paragraphs limited as near as practicable to a statement of a single set of circumstances. In addition, plaintiff has failed to include a request for relief as required in Fed. R. Civ. P. 8. Plaintiff's amended complaint must be a document that will completely replace her original complaint. It must contain all of the allegations of her original complaint and the request for relief sought in the original complaint, as well as the allegations and exhibits plaintiff has been instructed to include if she is to cure the defects found in her original complaint. Moreover, the amended complaint must be signed and the defendant named in the caption must be Select Publishing, Inc.

Because plaintiff's submission is not in a form that is acceptable as an amended complaint, I will extend the time within which she may prepare her amended complaint and file it with the court.

One other matter requires comment. In the order of May 4, 2001, I advised plaintiff that if she were to file an amended complaint, she would have 30 days from the date of filing in which to serve defendant Select Publishing, Inc. with the amended complaint in the manner prescribed in Wis. Stat. § 801.11(5). Plaintiff's May 21, 2001 submission shows by way of a "cc" notation at the end of page 2 of the document that plaintiff has sent a copy of her papers by regular mail to "Select Publishing, Inc., Christopher Houden, CEO." If

plaintiff believes that mailing a copy of her amended complaint to the defendant constitutes proper service of her amended complaint pursuant to Wis. Stat. § 801.11(5), she is mistaken. In the event it is not perfectly clear, the opportunity I am giving plaintiff to file an amended complaint is an opportunity for her to start over with her lawsuit from the beginning, as though she had never filed another complaint. The only difference is that she is keeping the same case number assigned to her original complaint instead of being assigned a new number. This means plaintiff is starting over also in her efforts to serve the defendant corporation with her amended complaint. To avoid the pitfalls plaintiff previously experienced in serving her original complaint, plaintiff should refer carefully to the discussion about proper service set out in the May 4, 2001 order.

ORDER

IT IS ORDERED that plaintiff may have an enlargement of time to June 8, 2001, in which to file an amended complaint that comports with the pleading requirements of the Federal Rules of Civil Procedures and that contains the information required by this court's order of May 4, 2001. Plaintiff may have an additional 30 days from the date she files her amended complaint in which to serve defendant in compliance with the requirements of Wis. Stat. § 801.11(5), and submit to the court proof of service.

Further, IT IS ORDERED that if, by June 8, 2001, plaintiff does not file an amended complaint, the action will be dismissed and the clerk of court will be directed to enter

judgment in favor of defendant and close this case.

Entered this 24th day of May, 2001.

BY THE COURT:

BARBARA B. CRABB
District Judge