

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

MARK WOODARD,

Plaintiff,

v.

ROCK COUNTY COURTHOUSE and
WI COURT of APPEALS OFFICE OF CLERK,

Defendants.

ORDER

03-C-0033-C

In an order entered on February 6, 2003, I gave plaintiff until February 21, 2003, in which to amend the caption of his complaint to name a suable entity in place of the defendant he identifies as the Rock County Courthouse and, immediately thereafter, to arrange to serve his complaint on the defendants in compliance with Fed. R. Civ. P. 4 and file proof of service with the court when service was accomplished. Now plaintiff has filed a response to the order.

It is not possible to determine precisely what it is that plaintiff is attempting to convey to the court in his response. He appears to be asking for more time to serve his complaint on the defendants, but at the same time, he asks the court to serve his complaint

for him. Also, he appears to have decided that he will not amend his complaint to name an individual in place of the “Rock County Courthouse,” because, according to plaintiff, “the term courthouse was to refer to actions of the people in the courthouse.” Finally, plaintiff states that he does not have a “retrievable” copy of the Federal Rules of Civil Procedure and cannot find the copy of Fed. R. Civ. P. 4 that this court sent to him with the February 6 order.

If plaintiff chooses not to amend his complaint to name a person as a defendant in place of the Rock County courthouse, he will not be able to proceed on his claim that his constitutional right of access to the courts was violated when a complaint and filing fee he submitted to the Rock County circuit court were not accepted. As I already have pointed out to plaintiff, he cannot serve his complaint on a brick and mortar building and he cannot recover against a defendant who is unaware of plaintiff’s claim and cannot defend against it. Moreover, to recover damages for alleged constitutional violations, plaintiff must establish each defendant’s personal responsibility for the claimed deprivation. He cannot sue an entity such as a “courthouse” and obtain a judgment of liability for a courthouse employee’s alleged tortious acts. Polk County v. Dodson, 454 U.S. 312, 325 (1981). If plaintiff does not know the identity of the individual who personally refused to accept his papers for filing, he can amend his complaint to name a high official such as the clerk of court, serve that official with his complaint, and then conduct formal discovery to learn the

name of the person directly responsible for allegedly violating his constitutional rights. Duncan v. Duckworth, 644 F.2d 653, 655-56 (7th Cir. 1981) (pro se complaint should not suffer dismissal of a defendant high official for lack of personal involvement when claim involves conditions or practices which, if they existed, would likely be known to higher officials or if petitioner is unlikely to know the person or persons directly responsible absent formal discovery). Once plaintiff learns who refused to accept his papers and filing fee, he will once again have to amend his complaint to name that specific individual and serve him or her with the amended complaint.¹

With respect to plaintiff's request that the court serve his complaint for him, the request must be denied. Plaintiff paid the fee for filing his complaint and is not proceeding as a pauper. The court may order the United States Marshals Service to serve process only in cases in which the plaintiff has been found eligible to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. Otherwise, the plaintiff is responsible on his own for arranging

¹ This court requires that an amended complaint be submitted in a specific format. A plaintiff who seeks to amend a complaint must submit an entirely new complaint that will take the place of the one previously filed. In the amended complaint, plaintiff must include all of the allegations made in the initial complaint. Plaintiff must draw a line through the allegations that he no longer wishes the court to consider. Plaintiff must **highlight** all new allegations that he is adding to the complaint. It must be very clear to the court which allegations are new and which ones are old, as well as which ones plaintiff is dropping. This is not the time for plaintiff to add new allegations that have nothing to do with those made in his previous complaint.

for service of his complaint. If he wishes, he may arrange to pay a sheriff's deputy to serve process for him, or he can follow the directions for obtaining a waiver of personal service of a summons and complaint set out in Fed. R. Civ. P. 4.

I am enclosing another copy of Fed. R. Civ. P. 4 with this order for plaintiff's use. In addition, I will extend slightly the time within which plaintiff is to amend his complaint to substitute a person for the defendant he identifies as the Rock County courthouse.

ORDER

IT IS ORDERED that

1) plaintiff's request that the court serve his complaint on the defendants for him is DENIED; and

2) plaintiff may have an enlargement of time to February 28, 2003, in which to amend his complaint to substitute a person for the defendant he has identified as the Rock County courthouse.

Further, IT IS ORDERED that plaintiff may have until March 28, 2003, in which to file with the court proof that he served his complaint on the defendants. If, by March 28, 2003, plaintiff fails to file proof of service or show cause for his failure to do so, I will dismiss

this case without prejudice for plaintiff's failure to prosecute.

Entered this 19th day of February, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge