

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. In an order dated February 19, 2003, I gave plaintiff 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, and until March 28, 2003, in which to file with the court proof that he served his complaint on the defendants. I advised plaintiff that if, by March 28,

2003, he failed to file proof of service or show cause for his failure to do so, I would dismiss this case without prejudice for his failure to prosecute.

Plaintiff has not amended the caption to his complaint and he has not submitted proof of service of his complaint on the defendants. Instead, he has submitted a document titled "Update of Reply to Feb 06 2003 Order of 03-C-33-C," in which he appears to be saying that he lost his copy of the complaint he filed with the court so he has mailed a single page statement to the clerks of the Rock County Circuit Court and the Court of Appeals for District IV which reads,

I am notifying you that I had filed via mail on December 31 2002 a complaint about a situation - condition that I thought was wrong and needed justifying. You or someone in your office mailed that complaint back to me. In this individuals opinion that action by you constitutes a breach of the constitutional right to get redress in the courts. I have asked for damages.

Written By, Mark Woodard

Although plaintiff has not provided the court with an amended caption to his complaint or expressly stated his intention to substitute the clerk of the Rock County Circuit Court as a defendant for the defendant he identified in his original complaint as the Rock County Courthouse, his "update" suggests that he wishes to make this change. In addition, it appears he is specifying the clerk of the Court of Appeals for District IV as a defendant in place of the "office of the clerk." Therefore, on the court's own motion, I have amended the caption of plaintiff's complaint to substitute the clerk of the Rock County Circuit Court as

a defendant in place of the Rock County Courthouse and to make clear that plaintiff is suing the clerk of Wisconsin Court of Appeals District IV rather than the office of the clerk. The caption of all future orders will be changed accordingly.

However, plaintiff's action of mailing the statements quoted above to the defendants does not satisfy his obligation under Fed. R. Civ. P. 4 to serve the defendants with his complaint. Valid service of process is a prerequisite to a district court's assertion of personal jurisdiction over the defendants. Swaim v. Moltan Co., 73 F.3d 711, 719-20 (7th Cir. 1996) (citing Omni Capital Int'l v. Rudolf Wolff & Co., Ltd., 484 U.S. 97, 103 (1987)). To accomplish valid service of process, plaintiff will have to do more than simply give the defendants broad notice of his lawsuit. Where, as here, plaintiff is suing two individuals, he can satisfy the service requirements of Fed. R. Civ. P. 4 by following one of two procedures.

1. Plaintiff may notify each defendant in writing of the filing of his lawsuit and request that the defendant waive service of a summons. Fed. R. Civ. P. 4(d)(2). If plaintiff chooses this method of service, he must

- complete for each defendant an original and one copy of a form titled "Notice of Lawsuit and Request for Waiver of Service of Summons" (blank notice forms are attached to this order);
- address a large envelope to each defendant and place the following documents inside:

- a) an original and one copy of the completed notice form;
- b) a blank form titled "Waiver of Service of Summons" (also attached to this order);
- 3) a copy of his complaint; and
- 4) a self-addressed, stamped envelope for the defendant's use in returning the waiver form to him;

- mail the envelope to each defendant by first-class mail or other reliable means;
- allow the defendants "a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent" (Fed. R. Civ. P. 4(d)(2)(F)).
- mail a copy of the signed waiver forms to the court for filing as proof of service.

2. Plaintiff may arrange to serve each defendant personally with a summons and complaint. However, plaintiff need not follow this procedure unless a defendant refuses to complete and return a waiver form. If plaintiff chooses this method of service, he must

- complete a summons form for each defendant (summons forms are available on request from the clerk of court);
- present the completed summons forms to the clerk of this court to obtain his

signature and an imprint of the court's seal;

- arrange for someone over the age of 18 years of age who is not a party to the lawsuit to

1) deliver the signed and sealed summons and a copy of the complaint to each defendant personally; or

2) leave the summons and complaint at the defendant's house with a person of suitable age and discretion who lives there with the defendant; or

3) deliver the summons and complaint to an agent authorized by appointment or by law to receive service of process on the defendant's behalf.

- file with the court an affidavit of the person who effected service of the summons and complaint upon the defendants stating the time and date the delivery was made and with whom the summons and complaint was left, or showing a receipt signed by the defendant or other evidence of delivery. Fed. R. Civ. P. 4(1).

Because plaintiff has not yet succeeded in properly serving his complaint on the defendants, a fair amount of time has passed without movement of this case toward

resolution. Fed. R. Civ. P. 4(m) sets the time for service of a summons and complaint upon a defendant at 120 days. It also provides as follows:

If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

Plaintiff filed his complaint on January 21, 2003. One-hundred and twenty days from the date of filing is May 23, 2003. I am giving plaintiff notice that I will allow him until May 23, 2003, in which to file with this court proof that he has served his complaint on the defendants using one or the other of the procedures described above. To avoid unnecessary delay, I am enclosing to plaintiff with this order three copies of his complaint, one for his own records and one to be sent to each defendant with the necessary accompanying documents listed above.

ORDER

IT IS ORDERED that plaintiff may have until May 23, 2003, in which to file proof of service of his complaint on the defendants with this court. If, by May 23, 2003, plaintiff does not file proof of service of his complaint as required, or show good cause for his failure to do so, the Clerk of Court is directed to enter judgment dismissing this case, without

prejudice, for plaintiff's failure to prosecute.

Entered this 11th day of April, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge