

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

BRUCE A. ROBERTS,

Plaintiff,

v.

BRUCE I. KNIGHT, Chief,
NATURAL RESOURCES CONSERVATION
SERVICE, USDA,

Defendants.

ORDER

04-C-139-C

This is a civil action brought pursuant to the Freedom of Information Act, 5 U.S.C. § 552. Plaintiff Bruce Roberts seeks to compel defendants to produce certain records held by defendant Natural Resources Conservation Service. Jurisdiction is present under 5 U.S.C. § 552(a)(4)(B).

Plaintiff has paid the fee for filing his complaint. Because he is not proceeding as a pauper under the in forma pauperis statute, 28 U.S.C. § 1915, plaintiff is responsible for serving his complaint on the defendant. I refer to the defendant in the singular because The Freedom of Information Act authorizes suit only against an agency and not against individual officers and governmental employees. See § 552(a)(4)(B). Therefore, on the

court's own motion, I will dismiss Bruce I. Knight as a defendant.

Rule 4 describes the process by which a plaintiff must notify a defendant that the plaintiff has begun a federal suit. When a plaintiff names a defendant who is an agency of the United States, Rule 4(i)(2) requires service to be accomplished

(2) . . . by serving the United States in the manner prescribed by paragraph (1) of this subdivision and by also sending a copy of the summons and of the complaint by registered or certified mail to the . . . agency. . . .

Fed. R. Civ. P. 4(i)(1) provides that service upon the United States is accomplished

(A) by delivering a copy of the summons and of the complaint to the United States attorney for the district in which the action is brought or to an assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk of the court or by sending a copy of the summons and of the complaint by registered or certified mail addressed to the civil process clerk at the office of the United States attorney and

(B) by also sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia

Service on the defendant agency and, in this case, the United States Attorney General in Washington, D.C. and the United States Attorney for the Western District of Wisconsin, must be completed within 120 days after the filing of the complaint. Fed. R. Civ. P. 4(m). If service is not effected within 120 days, and if the plaintiff cannot show good cause why service was not made within that period, the action against the defendant is to be dismissed

without prejudice.

Plaintiff filed his complaint in this court on March 9, 2004. Although the 120-day time period for effecting service of process will not expire until July 7, 2004, plaintiff should be able to accomplish service much earlier than that simply by exercising due diligence.

Plaintiff should note that the duty to waive personal service of process is not applicable to the United States and its officials and agencies. See Fed. R. Civ. P. 4(d) (individual, corporation or association subject to service under subdivisions (e)(f) or (h) [of Rule 4] has duty to respond to request for waiver of formal service of process). Officers and agencies of the government are subject to service under subdivision (i) of Rule 4. Moreover, there is no need to obtain waiver of personal service of process on government agencies or officers. As noted above, proper service is effected when plaintiff mails a copy of his complaint and a completed summons form by registered or certified mail to the United States Attorney General in Washington, D.C., the United States Attorney for the Western District of Wisconsin and the Internal Revenue Service.

Once plaintiff has served his complaint, he must file proof of service with the court by sending the court a copy of the receipts plaintiff obtains from the post office when he makes the mailing. The defendant agency will have 60 days from the date of service of plaintiff's complaint in which to file a response to the complaint. As soon as the agency responds, the court will make a determination what procedures the parties should follow in

resolving this suit will advise the parties of its decision.

ORDER

IT IS ORDERED that defendant Bruce I. Knight is DISMISSED from this action.

Further, IT IS ORDERED that plaintiff serve his complaint on the defendant agency and the United States as provided in Fed. R. Civ. P. 4(i)(1) and (2) file proof of service with the court after he has accomplished service.

Entered this 29th day of March, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge