

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

JOEL FLAKES,

Plaintiff,

v.

MATTHEW J. FRANK,
CORRECTIONS CORPORATION OF AMERICA,
JANE SONDALE and
DANIEL BENIK and SGT. LAWRENCE DAKEN,

Defendants.

ORDER

04-C-189-C

In an order entered in this action on December 9, 2004, Magistrate Judge Stephen Crocker gave plaintiff until February 9, 2005, in which to file an amended complaint identifying the John or Jane Doe defendants relating to the following two claims:

1) plaintiff's claim that unknown Stanley Correctional Institution employees retaliated against him for exercising his First Amendment right to file grievances by denying him job opportunities (plaintiff is proceeding against defendant Benik for the sole purpose of conducting discovery to learn the names of the individual personally involved in these alleged retaliatory acts); and

2) plaintiff's claim that an unknown employee at the Columbia Correctional Institution deliberately refused to arrange for plaintiff to have hip surgery despite Dr. Daley's approval of the surgery (plaintiff is proceeding against defendant Frank for the purpose of discovering who this individual is, but is also proceeding against Frank on another, independent claim).

On February 7, 2005, plaintiff filed a proposed amended complaint that did not comply with the magistrate judge's directive that he submit an unaltered copy of his original complaint, changing the caption only to identify the pleading as an amended complaint and insert the names of the former Doe defendants, and changing the body of the complaint only to replace the references to the Doe defendants with the names provided to him by the state. Because plaintiff attempted to make several other proposed changes to his amended complaint and add several additional non-Doe defendants, I denied his motion to amend in an order dated February 22, 2005. However, I offered plaintiff a second chance to file and serve no later than March 4, 2005, a motion to amend that was accompanied by a proposed amended complaint that complied strictly with the magistrate judge's order. Now plaintiff has submitted a revised proposed amended complaint, which I construe as including a renewed motion to amend. This time the motion will be granted.

Although plaintiff still has not heeded precisely the magistrate judge's directive to replace references to the Doe defendants in the body of the complaint with the names of the

individuals he has identified, he has listed the names of two new defendants in the caption of the amended complaint: Peggy Meyer and Cynthia Neuhauser. In addition, he has inserted a page just under the caption page in which he states that Peggy Meyer is the former Doe defendant referred to in paragraph #57 of his complaint (the paragraph in which plaintiff contends that an unknown Stanley Correctional Institution employees retaliated against him for exercising his First Amendment right to file grievances by denying him job opportunities) and Cynthia Neuhauser is the Doe defendant referred to in paragraph #30 of his complaint (the paragraph in which plaintiff contends that an unknown employee at the Columbia Correctional Institution deliberately refused to arrange for plaintiff to have hip surgery).

The paragraph numbers plaintiff refers to are the numbers that defendants Sondalle, Benik and Daken assigned to his allegations when they answered plaintiff's complaint. For reasons unknown, instead of using a copy of the renumbered complaint as his proposed amended pleading, plaintiff has submitted with his motion a duplicate copy of his original complaint.

For the sake of clarity, I am replacing plaintiff's original complaint with a copy of the renumbered complaint which shall constitute the operative pleading in this case, together with plaintiff's revised caption and the page describing the paragraphs where his allegations against the newly named defendants can be found. This pleading is sufficient to satisfy Fed.

R. Civ. P. 8's requirement that plaintiff give fair notice to the defendants of his claims against them so that they can file a response.

ORDER

IT IS ORDERED that plaintiff's motion to amend his complaint to substitute Cynthia Neuhauser for the Doe defendant referred to in paragraph 30 of the proposed amended complaint and Peggy Meyer for the Doe defendant referred to in paragraph 57 of the proposed amended complaint is GRANTED.

Further, IT IS ORDERED that defendant Daniel Benik is DISMISSED from this action, because his responsibility for providing plaintiff with Peggy Meyer's name is complete.

I accept plaintiff's proposed amended complaint as described above as the operative pleading in this case. I will assume that the previously named defendants will stand on their responses to plaintiff's original complaint as their responses to plaintiff's amended complaint.

In future orders and submissions, the caption will be amended to omit Daniel Benik and to add Cynthia Neuhauser and Peggy Meyer as defendants.

The parties are reminded that this court's screening order entered herein on April 30, 2004, and an order entered on May 21, 2004 responding to plaintiff's May 17, 2004

motion for reconsideration govern plaintiff's amended complaint.

Pursuant to an informal service agreement between the Attorney General and this court, copies of plaintiff's amended complaint, this order and the April 30, and May 21, 2004 screening orders are being sent today to the Attorney General for service on the newly added defendants.

Entered this 8th day of March, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge