

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

KEIFVIN MALONE,

Plaintiff,

v.

JOHN CLARK,

Defendant.

ORDER

04-C-229-C

In an order entered in this case on July 12, 2004, I noted that plaintiff had not followed this court's Procedure To Be Followed On Motions For Injunctive Relief in connection with his motion for preliminary injunction filed on June 21, 2004. I told plaintiff I was enclosing a copy of the procedures with the order and gave him until July 19, 2004, in which to supplement his motion with proposed findings of fact and evidentiary materials as the procedures allow. Unfortunately, plaintiff now has advised the court that he did not receive the procedural memorandum in the July 12 mailing. Therefore, plaintiff has requested an extension of the schedule for supplementing his motion. In addition, plaintiff has moved for an order directing the business office at the prison to give him money from his release account to pay for service of his complaint on the defendant.

Plaintiff's request for alteration of the schedule for briefing his motion for preliminary injunction will be granted. His motion for an order directing the business office to allow him to use his release account money to pay for service of his complaint on the defendant will be denied.

A copy of the court's procedures to be followed on motions for injunctive relief is included with this order. Plaintiff will have until August 13, 2004, in which to supplement his motion with proposed findings of fact and any additional evidentiary materials necessary to support them. Defendant will have until August 27, 2004, in which to oppose the motion. Plaintiff may have until September 6, 2004, in which to serve and file a reply.

With respect to plaintiff's request for an order directing prison officials to allow him to use release account funds to pay for personal service of his complaint on the defendant, there is no legal authority that would permit me to issue such an order. However, I construe plaintiff's motion as a motion for leave to proceed in forma pauperis for the purpose of serving his complaint on the defendant. From the trust fund account statement plaintiff submitted with his motion, I conclude that he qualifies for indigent status. Therefore, I will forward a copy of plaintiff's complaint to the Attorney General for the State of Wisconsin in accordance with the informal service agreement reached between this court and the Attorney General's office. Under this agreement, the Attorney General will ask the defendant for permission to accept service of process on his behalf and will advise the court

of the defendant's response within 15 days of the date the court sends the complaint to the Attorney General. If the defendant agrees to accept service, the Department of Justice will have 40 days from the date of the court's original mailing in which to file an answer or otherwise plead in response to the complaint.

ORDER

IT IS ORDERED that

1. Plaintiff's motion for alteration of the schedule for briefing his motion for preliminary injunction is GRANTED. Enclosed to plaintiff with this order is a copy of the court's procedures to be followed on motions for emergency injunctive relief. Plaintiff may have until August 13, 2004, in which to supplement his motion with proposed findings of fact and any additional evidentiary materials necessary to support them. Defendant may have until August 27, 2004, in which to oppose the motion. Plaintiff may have until September 6, 2004, in which to serve and file a reply.

2. Plaintiff's motion for leave to proceed in forma pauperis for the purpose of serving his complaint is GRANTED. The clerk of court is requested to forward a copy of plaintiff's

complaint to the Attorney General for the State of Wisconsin in accordance with the informal service agreement reached between this court and the Attorney General's office.

Entered this 27th day of July, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge