

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

STACEY MILLER,

Plaintiff,

v.

BRIAN BLANCHARD, JAC HEITZ,
TIM HAMMOND,

Defendants.

ORDER

04-C-255-C

On June 14, 2004, I granted plaintiff leave to proceed pursuant to 28 U.S.C. § 1915A on his claim that defendants Blanchard, Heitz and Hammond violated his right to equal protection under the Fourteenth Amendment when they backed out of an agreement to reduce his sentence because of his race. At that time, I told plaintiff that because he was not proceeding in forma pauperis, it was his responsibility to serve the defendants with his complaint. The June 14 order included a memorandum describing the procedure to be followed in serving a complaint on state officials and three copies of plaintiff's complaint and blank waiver of service of summons forms.

When by July 26, 2004, plaintiff failed to file proof of service of his complaint on the defendants, I entered another order giving him until August 6, 2004, in which to file proof of service of his complaint on the defendants with the court or a written explanation of the

status of his efforts to do so. I told plaintiff that if he had been unsuccessful in obtaining signed waiver forms from the defendants, he would have to make arrangements promptly to request summons forms from the clerk of court so that he could arrange for personal service of the complaint on each defendant. Now plaintiff has responded to the July 26 order.

In his response, plaintiff states that when he received the court's order of June 14, he mailed the order (and presumably the copies of his complaint, the memorandum describing service procedures and the blank waiver of service of summons forms) to "a gentlemen" he believed would be able to assist him. Apparently, plaintiff did not receive the help he expected. He asks that the court grant him additional time in which to serve the complaint himself. In a separate letter, plaintiff asks for summons forms, which ordinarily are not necessary unless the defendants refuse to waive service of a summons.

I will grant plaintiff's request for additional time within which to serve his complaint. However, I will refrain from sending plaintiff summons forms at this time. Under Fed. R. Civ. P. 4(m), a plaintiff has 120 days after filing a complaint in which to serve the defendant. Plaintiff's complaint was not officially filed until June 24, 2004, when the court allowed plaintiff to proceed under § 1915A. Therefore, if plaintiff acts promptly, he still should be able to ask the defendants to waive service of a summons and serve his complaint

well before the deadline for doing so established in Rule 4.

Once again, I am enclosing with this order a copy of memorandum titled "Procedure for Serving a Complaint on Individuals in a Federal Lawsuit," to help plaintiff understand the procedure for serving his complaint on the defendants. In addition, I am enclosing to plaintiff three copies of his complaint, three copies of the court's order of June 14, 2004, and the forms he will need to send to the defendants in accordance with the procedures set out in Option 1 of the memorandum.

ORDER

IT IS ORDERED that plaintiff promptly serve his complaint, together with the court's June 14, 2004, order, on the defendants and file proof of service of the complaint as soon as service has been accomplished. If, by September 17, 2004, plaintiff fails to submit proof of service of his complaint on the defendants, I will direct plaintiff to show cause why his case should not be dismissed for lack of prosecution.

Entered this 11th day of August, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge