

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

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WILLIE C. SIMPSON

Petitioner,

ORDER

v.

04-C-298-C

PHILLIP KINGSTON, Warden,  
Columbia Correctional Institution;  
JIM SPANGBERG, Unit Manager;  
WILLIAM NOLAND, Institution  
Complaint Investigator,

Respondents.  
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On May 18, 2004, I directed petitioner Willie C. Simpson to pay \$.72 as an initial partial payment of the \$150 fee for filing this case. I advised petitioner that if, by June 8, 2004, he failed to pay the initial partial payment or show cause for his failure to do so, he would be held to have withdrawn this action voluntarily. Now petitioner has filed a document titled, "Notice of Motion and Motion For/To Amend Petition and 30 Day Extension to Pay Initial Filing Fee." In this motion, petitioner asks for permission to amend his complaint to add more defendants and "change [his] arguments," and for more time in which to pay the initial partial payment of the filing fee. I will address each matter in turn.

In support of his motion to amend the complaint, petitioner states that this court

erred when it included S. Wall and W. Mass in the caption of the suit. According to Simpson, these individuals were defendants in another case he filed in this court, Simpson v. Wall, 04-C-29-C. That case has been dismissed.

Petitioner is correct that the court made a mistake in the caption of the May 18 order. The confusion arose from the fact that the caption of petitioner's complaint is not in compliance with Fed. R. Civ. P. 10(a). Rule 10(a) directs a plaintiff to list the names of *all* the parties in the caption of the complaint. The caption of petitioner's complaint shows petitioner's name, but does not list any defendants. Instead, petitioner wrote in the place where the names of the defendants were to have been listed, "See Attachment." On page 2 of the complaint where he was to identify the defendants, petitioner again refers to an "attachment marked addition." The names of S. Wall and W. Mass, Milwaukee County Deputies, are also listed on page 2 in a space provided for identifying defendants in previous lawsuits. The court inadvertently understood those names to be the named defendants in this case, along with Phillip Kingston, Jim Spangberg and William Noland, who are listed on a separate unnumbered page following page 2.

Petitioner's request to amend his complaint to complete a proper caption in accordance with Fed. R. Civ. P. 10 will be granted. As shown above, the court already has corrected the error in the caption of its orders.

As for petitioner's request to amend his complaint to add more defendants and change his arguments, petitioner notes that pursuant to Fed. R. Civ. P. 15(a), he is allowed

to amend his pleading once “as a matter of course” before a responsive pleading is served. Although he correctly states the language of Rule 15, he overlooks the fact that any complaint he files is subject to the screening provisions of the Prison Litigation Reform Act. Under the act, the court is required to screen any complaint he files to identify the claims and dismiss any claim that is frivolous, malicious or is not a claim upon which relief may be granted. 28 U.S.C. §§ 1915A(a), (b). The screening obligation applies at all stages of the lawsuit.

As petitioner is aware, his original complaint is presently before the court for screening. However, it is an inefficient use of the court’s time to screen petitioner’s original complaint if he intends to promptly change it. Petitioner should be aware that if he files an amended complaint, it must stand on its own as the operative pleading in the case. In other words, the amended complaint must completely replace the original complaint. It is simply too confusing for the parties and the court when there is an original complaint and then one or more documents adding to or subtracting from that document scattered throughout the file.

If petitioner wants to substitute a different complaint for the one he already has filed in this case, he may have until June 16, 2004, in which to do so. If, by June 16, 2004, petitioner has not revised his complaint and submitted it for consideration, I will assume he has abandoned the idea of changing the original complaint and I will proceed to screen the complaint he submitted in May.

Next, petitioner asks for an extension of 30 days in which to pay the initial partial payment of the filing fee. He states that he has no money in his prison account and is in a non-pay status. Petitioner believes that if he writes to family and friends one of them may be willing to send him the money to pay it.

I have reviewed petitioner's trust fund account statement and find that the last deposit to petitioner's account was made February, 2004. At the time he submitted the statement, he had \$.48 in his release account and a zero balance in his regular account. This is a sufficient showing that he does not have the means to pay the initial partial payment that he was directed to pay on May 18. Pursuant to 28 U.S.C. § 1915(b)(4), petitioner may proceed in forma pauperis without prepaying an initial partial payment of the filing fee. Therefore, his request for an enlargement of time in which to pay the initial partial payment will be denied as unnecessary.

#### ORDER

IT IS ORDERED that

1. Petitioner's request for leave to amend his complaint is GRANTED. Petitioner is granted leave to amend the caption of his complaint to bring it into compliance with Fed. R. Civ. P. 10. In addition, he may have until June 16, 2004, in which to submit a revised complaint that will take the place of the complaint. If, by June 16, 2004, petitioner fails to file an amended complaint that will substitute for the one he already has filed in this case,

I will assume that he does not intend to file a revised complaint and will screen the original complaint pursuant to 28 U.S.C. § 1915(e)(2)(B).

2. Petitioner's request for an enlargement of time in which to pay the initial partial payment he was assessed in the order dated May 16, 2004 is DENIED as unnecessary. Petitioner is relieved of the obligation to pay an initial partial payment pursuant to 28 U.S.C. § 1915(b)(4).

Entered this 2nd day of June, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge