

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

WILLIE C. SIMPSON

Petitioner,

ORDER

v.

07-C-493-C

WARDEN GREGORY GRAMS,
JANEL NICKEL, etc.,

Respondents.

Petitioner Willie C. Simpson, a prisoner at the Columbia Correctional Institution in Portage, Wisconsin, has submitted a proposed complaint. He asks for leave to proceed in forma pauperis. A decision on the request will be delayed for two reasons.

First, because petitioner is a prisoner, he is subject to the 1996 Prisoner Litigation Reform Act. This means that before this court may decide whether he can proceed with his complaint in forma pauperis, petitioner will have to make an initial partial payment of the filing fee in the amount of \$.41 and the remainder of the fee in monthly installments even if his request for leave to proceed is denied. If petitioner does not have the money to make the initial partial payment in his regular account, he will have to arrange with prison authorities to pay some or all of the assessment from his release account. This does not

mean that petitioner is free to ask prison authorities to pay *all* of his filing fee from his release account. The only amount petitioner must pay at this time is the \$.41 initial partial payment. Before prison officials take any portion of that amount from petitioner's release account, they may first take from petitioner's regular account whatever amount up to the full amount petitioner owes.

Second, petitioner will have to amend his complaint to bring it into conformance with the Federal Rules of Civil Procedure. There are several flaws in petitioner's complaint.

1. It is not possible to tell precisely who petitioner is suing. Fed. R. Civ. P. 10(a) requires that petitioner's complaint contain a caption which "shall include the names of all the parties." In the caption of his complaint, petitioner names Gregory Grams and Janel Nickel, but no other respondents. Petitioner does refer to an "attachment" to his complaint as setting forth the parties, but the top of each page of the entire complaint is identified as an "attachment." The body of his complaint contains twelve paragraphs describing twelve "defendants," their titles and work locations, as well as a statement that petitioner is suing each in his or her "individual and official capacity." At the end of his complaint, however, petitioner seeks relief from only ten of the twelve individuals, raising the question whether he actually intended to include the additional two individuals in his complaint or simply forgot to ask for relief for their alleged wrongdoing. Petitioner will have to revise the caption of his complaint to list each respondent by name as Fed. R. Civ. P. 10(a) requires. He is not to include in the caption the respondent's title, work location, or any other statements

regarding the capacity in which he wishes to sue them.

2. Petitioner's complaint violates the notice pleading standard required by Fed. R. Civ. P. 8. Nowhere in the body of his complaint does petitioner identify precisely which respondent acted or failed to act in ways that allegedly violated his constitutional rights. Instead, he alleges generally that "defendants" collectively did this or that or had a "policy" that violated his rights. Fed. R. Civ. P. 8 requires that a petitioner's complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." This provision is intended to insure that a respondent has enough notice of petitioner's claim against him or her that he or she can file an answer. Higgs v. Carver, 286 F.3d 437, 429 (7th Cir. 2002). The manner in which petitioner presents his claims does not advise respondent what he or she did to violate petitioner's rights. For example, petitioner alleges that "the defendants" have a policy requiring guards to be given access to inmate medical records, but petitioner's list of respondents includes inmate complaint examiners, and two prison guards, who are not likely to have played any role in the formulation of such policies. Also, petitioner alleges that "defendants" informed him he will be placed into a cell with another prisoner despite the fact that petitioner has a contagious disease. It is extremely unlikely that twelve separate individuals, including respondents petitioner has identified as health services employees, a doctor, and a "privacy officer" would be involved personally in making cell assignment decisions and telling petitioner about them. Likewise, petitioner alleges that "defendants" wrote petitioner a conduct report for refusing to cell with another

inmate, but it would be highly unusual for a conduct report to be written by multiple individuals, including the Secretary of the Department of Corrections.

Liability under § 1983 is imposed only where a respondent's conduct subjects a petitioner to a deprivation of a right secured by the Constitution. Section 1983 creates a cause of action based on personal liability. A respondent cannot be held liable in a § 1983 action unless he caused or participated in the alleged deprivation of rights. In order to give each respondent the necessary information about what it is he or she did to violate petitioner's rights, petitioner will have to re-write his complaint to clarify which respondents he believes participated in creating the policies he is challenging and which respondents took the actions he describes as violating his constitutional rights.

3. Petitioner's complaint contains sixteen pages of legal argument. Fed. R. Civ. P. 8(e) provides that "each averment of a pleading shall be simple, concise and direct." In other words, a complaint must be short and straightforward. It should say no more than is necessary to put the respondents on notice of petitioner's charges of wrongdoing so that each one can understand what he or she is supposed to have done and defend against the claim. When petitioner rewrites his complaint, he should omit the legal argument. If he wishes, he can submit the argument in a brief separate from his complaint.

ORDER

IT IS ORDERED that petitioner is assessed \$.41 as an initial partial payment of the \$350 fee for filing this case. He is to submit a check or money order made payable to the clerk of court in the amount of \$.41 on or before September 28, 2007. If, by September 28, 2007, petitioner fails to make the initial partial payment or show cause for his failure to do so, he will be held to have withdrawn this action voluntarily. In that event, the clerk of court is directed to close this file without prejudice to petitioner's filing his case at a later date.

Further, IT IS ORDERED that petitioner may have until September 28, 2007, in which to submit a new complaint that complies with Fed. R. Civ. P. 8, as explained above. If, by September 28, 2007, petitioner fails to file the required amended complaint or show cause for his failure to do so, then this case will be dismissed without prejudice on the court's own motion.

Entered this 11th day of September, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge