

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

LARRY HOLMON,

Plaintiff,

v.

DR. LORIA LOYDA, JAN KRUEGER,
DAVID BARNEY, PAT MCCULLOUGH,
MARIO CANZIANI, CAROLYN CADA
and DONNA DUNNETT,

Defendants.

ORDER

11-cv-234-slc

On April 8, 2011, plaintiff Larry Holmon, filed a document titled “Motion,” in which he asks “for the state official to produce the last known addresses of (Defs.) that was not served . . .” Later in his motion, however, plaintiff asks if he can add Ann Semron¹ in place of the defendants Cada and Dunnett, whom he has been unable to serve. *See* Dkt. 9.

It is unclear how plaintiff would like to proceed. In his motion he first asks for the addresses of the unserved parties, but later seems resigned to dismissing the two unserved defendants. This is not necessarily so. Plaintiff has two options:

(1) If plaintiff would like to continue to proceed against defendants Cada and Dunnett, he may request that the United States Marshals attempt to locate and serve these two parties. There is one complication with this option: defendants stated in their response to plaintiff’s motion that Donna Dunnett is a name that could they could not identify for service. However, if plaintiff chooses this option, the court will direct the marshal to serve defendant Cada at her last known address and will substitute Jane Doe in place of Donna Dunnett. After defendant

¹Defendants’ response identifies Ann “Semron” as Ann Semrow and I will use her correct name.

Cada has answered, the court will schedule a preliminary pretrial conference, at which plaintiff will be provided instructions for obtaining the identity of the Doe defendant.

(2) If plaintiff would rather substitute Ann Semrow in place of defendants Cada and Dunnett, than he will have to file an amended complaint. To help the court and defendants understand what changes a plaintiff is making in an amended complaint, it is this court's policy to ask the plaintiff to file a proposed amended complaint that looks just like the original except that plaintiff is to highlight any new defendants in the caption and highlight all the new or modified allegations he has made to the body of the complaint or to his request for relief. (If plaintiff does not have a highlighter, then he may circle the new information instead.) If plaintiff wants to delete certain allegations from the old version of the complaint, he should draw a line through those allegations in his proposed amended complaint. In the event that plaintiff has not retained a copy of the original complaint, I am enclosing one with this order.

Because it is now clear that the answer filed on April 4, 2011 was not filed on behalf of all of the defendants, and in order to allow plaintiff the opportunity to respond to this order, the preliminary pretrial conference previously set for June 1, 2011 will be canceled. The court will reschedule the hearing as soon as all defendants have responded to plaintiff's complaint.

One final matter: plaintiff has filed a motion to serve more than 25 interrogatories. This request is premature. In pro se cases in this court, discovery does not begin until after the pretrial conference, at which the court sets the entire schedule for this case and explains way things work in this court, including discovery. The fact that plaintiff is a patient and not a prisoner has no bearing on the application of Fed. R. Civ. P. 33(a)(1), which allows service of 25 interrogatories on each party. Which means, for example, if there are seven

defendants, plaintiff may serve up to 25 interrogatories on each of the seven defendants without first getting permission from the court.

ORDER

IT IS ORDERED that

1. Plaintiff may have until May 13, 2011 to respond to this order indicating whether he would like to continue his case against defendants Cada and Dunnett or whether he would prefer to substitute Ann Semrow in place of defendants Cada and Dunnett. If plaintiff would like to substitute Ann Semrow, he has until May 13, 2011 in which to file an amended complaint as described above.
2. The preliminary pretrial conference set for June 1, 2011 is CANCELED.
3. Plaintiff's motion to serve more than 25 interrogatories is DENIED as premature.

Entered this 21st day of April, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge