

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

JEFFREY M. DAVIS, JR.,

Plaintiff,

v.

DIVINE SAVIOR HOSPITAL,
DR. JACKSON, DR. CHARLES BOURSIER
and DR. GERALD KRUMPOS,

Defendants.

ORDER

13-cv-101-wmc

On February 12, 2013, plaintiff Jeffrey Davis, Jr., a prisoner at the Columbia Correctional Institution in Portage, Wisconsin filed a proposed complaint under 42 U.S.C. § 1983. The court assessed an initial partial payment of the filing fee, which plaintiff paid. Plaintiff's complaint was then taken under advisement for screening pursuant to the 1996 Prisoner Litigation Reform Act and 28 U.S.C. § 1915A. Now before the court is defendants' motion to stay discovery. *See* dkt. 16.

In this case, defendants have not been served yet because plaintiff's complaint has not been screened. Upon review of the docket sheet, it appears that plaintiff mailed defendants a document titled "waiver of summons," which counsel signed and returned to plaintiff. This however, does not constitute acceptance of service for two reasons. First, the document is not the court-approved form provided by the Administrative Offices of the United States Courts. More importantly, plaintiff has not been allowed to proceed in this case yet. Because plaintiff is a prisoner, he is subject to the 1996 Prisoner Litigation Reform Act. This means that before this court may decide whether plaintiff can proceed, his complaint must be screened pursuant to 28 U.S.C. § 1915A. Leave to proceed will not be granted if the action must be dismissed as malicious or legally "frivolous," a term that means that the complaint does not allege a claim of

any kind. Leave can be denied also if the complaint does not state a claim on which plaintiff could obtain relief under the law or if plaintiff is asking for money from a defendant who is legally protected from having to pay money in his case.

Turning to defendants' motion to stay discovery pending resolution of a forthcoming motion to dismiss, defendants are advised that plaintiff's discovery requests are premature. In pro se cases, like this one, it is the policy of the court that discovery shall not begin until after the pretrial conference is held, at which I will explain the rules of discovery and answer any questions the plaintiff may have about the discovery process. To the extent that plaintiff already has served discovery requests, those requests have no effect at this time and will not take effect until after the preliminary pretrial conference at the earliest. *See, e.g., Estate of Wilson v. General Tavern Corp.*, No. 05-81128, 2006 WL 290490, *1-2 (S.D. Fla. Feb. 2, 2006); *Riley v. Walgreen Co.*, No. H-04-2189, 2005 WL 1635443, *1 (S.D. Tex., Jan. 31, 2005).

ORDER

IT IS ORDERED that

- (1) Defendants' motion to stay discovery, dkt. #16, is GRANTED. Discovery in this case will not begin until after the schedule is set at the telephonic pretrial conference in this case, which, depending on whether plaintiff's complaint survives screening, will be scheduled after defendants have been served and their answer is filed.
- (2) Any pending discovery requests made by plaintiff are STAYED.

Entered this 17th day of April, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge