

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

GREGORY R. McGEE,

Petitioner,

v.

SBC/AMERITECH OF WISCONSIN, INC.;
EDWARD E. WHITACRE JR. - CEO & COB;
KAREN E. JENNINGS - SR. EXEC. VICE PRESIDENT - HR;
EDWARD A. MUELLER - PRESIDENT & CEO - AMERITECH;
JIM MAUER, PRESIDENT OF AMERITECH OF WISCONSIN;
MATHIEU J. ROBISON - VICE PRESIDENT - OPERATIONS;
SEAN E. BOYLE - GEN. MGR. - OPERATIONS EAST;
PEGGY TEXIERA - DIRECTOR OF HR & LABOR RELATIONS;
JOE KOCVARA - STATE WIDE FIELD MANAGER; and
BRIAN WASHINGTON - FIELD DISPATCH CENTER MANAGER,

Respondents.

Petitioner Gregory R. McGee, a resident of Chicago, Illinois, seeks leave to proceed in forma pauperis in this civil action. In his complaint, petitioner alleges that he was terminated from his job with defendant SBC/Ameritech in Madison, Wisconsin, because he is African-American and male. A decision on petitioner's request for pauper status will be stayed for several reasons.

First, petitioner's affidavit of indigency is too vague to allow the court to determine whether he qualifies for indigent status. Petitioner avers that he is single and self-employed. He asserts that his income is "unpredictable and not guaranteed," but he does not reveal what his average monthly income was over the past year. In addition, he avers that his father has given him money in the last twelve months, but he does not identify a dollar amount except to say the gifts have been "a hundred or two for medical expenses or some bill." From this statement, it is not possible to tell whether petitioner's father has given him \$100-\$200 on a single occasion or on more than one occasion in the last year. Third, petitioner states that he owes "hundreds if not thousands of dollars to over a dozen different entities." However, he does not list those entities, describe the total he owes to each or list how much his monthly payments are. Finally, he provides no information from which it is possible to learn how he pays for his basic necessities, such as food, clothing and shelter.

Even if petitioner were to submit a new affidavit of indigency showing that he is qualified to proceed as a pauper, he has not alleged a jurisdictional basis for his lawsuit and none is apparent that would allow him to proceed against any of the respondents except respondent SBC/Ameritech, Inc., his employer. Federal courts are courts of limited jurisdiction. Generally, a federal court may entertain lawsuits alleging a violation of a plaintiff's constitutional or federal rights and lawsuits alleging a violation of state law if the plaintiff and all of the defendants are citizens of different states. Petitioner's complaint does

not allege a violation of state law or that he is a citizen of one state and *all* of the respondents are citizens of different states. (Petitioner alleges that some of the named respondents are residents of Chicago, Illinois, where he resides.) Therefore, this court does not have diversity jurisdiction over his claims. Moreover, I cannot construe petitioner's complaint as alleging a constitutional violation. Only "state actors" may be sued for constitutional violations. All of the respondents petitioner names are private entities or individuals. Thus, the only possible jurisdiction basis for petitioner's claim is 28 U.S.C. § 1331, which permits petitioner to sue SBC/Ameritech of Wisconsin for alleged violations of federal law, in this case, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e. However, under Title VII, a petitioner may not sue his employer's officers and supervisors. His employer is the only proper respondent in a Title VII action. Therefore, on the court's own motion I will dismiss all of the respondents except respondent SBC/Ameritech of Wisconsin, Inc. for lack of jurisdiction.

Petitioner faces two more obstacles before he may proceed with his complaint under Title VII. First, the statute requires petitioner to obtain a right to sue letter before filing a federal lawsuit, see Patterson v. McLean Credit Union, 491 U. S. 164, 181 (1989) (plaintiff may bring Title VII action in federal court only after exhausting administrative procedures set out in 42 U.S.C. § 2000e-5 and obtaining right to sue letter from EEOC); see also EEOC v. Harris Chernin, Inc., 10 F.3d 1286, 1288 n.3 (7th Cir. 1993); Bullard v. Sercon Corp.,

846 F.2d 463, 467 (7th Cir. 1988) (citing 42 U.S.C. § 2000e-5(e)). Petitioner has submitted a copy of a letter dated September 22, 2002, in which a federal investigator for the United States Equal Employment Opportunity Commission advises him he has analyzed petitioner's evidence and has determined that the evidence does not support a charge of discrimination. However, the investigator invited petitioner to submit additional written evidence supporting his charge within five days of the date petitioner received the investigator's letter. He noted that if petitioner did not submit anything more, petitioner would be issued a dismissal that would end the agency's investigation and give petitioner the right to pursue the matter in federal court. Petitioner has not submitted the final dismissal or right to sue letter with his complaint. Therefore, even if he qualifies for indigent status, he may not proceed further with his lawsuit unless he can supplement the complaint with a copy of his right to sue letter from the Equal Employment Opportunity Commission.

Finally, a plaintiff must bring a Title VII civil action against his employer within 90 days after receiving a Notice of Right to Sue letter from the EEOC. See 42 U.S.C. 2000e-5 (f) (1); St. Louis v. Alverno College, 744 F.2d 1314, 1316 (7th Cir. 1984). If petitioner received a right to sue letter before September 30, 2003, 90 days before he filed his case in this court on December 29, 2003, his case may be subject to dismissal on a motion from respondent for his failure to meet the limitations period set by the statute.

ORDER

IT IS ORDERED that a decision is STAYED on petitioner's request for leave to proceed in forma pauperis against respondent SBC/Ameritech of Wisconsin, Inc.

Further, IT IS ORDERED that petitioner Gregory R. McGee may have until January 19, 2004, in which to submit

1) a revised affidavit of indigency providing detailed information about his wages and other income over the past year and the debts he presently owes; and

2) a copy of his Equal Employment Opportunity Commission right to sue letter.

If, by January 19, 2004, petitioner fails to submit the necessary documents, then I will deny him leave to proceed in forma pauperis and dismiss this case on the court's own motion for lack of jurisdiction.

Finally, IT IS ORDERED that on the court's own motion the complaint is DISMISSED for lack of jurisdiction insofar as petitioner seeks to sue respondents Edward E. Whitacre, Jr., Karen E. Jennings, Edward A. Mueller, Jim Mauer, Mathieu J. Robison, Sean E. Boyle, Peggy Texiera, Joe Kocvara and Brian Washington, and these respondents are

DISMISSED from the case.

Entered this 5th day of January, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge