

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

MICHAEL & DEBORAH SCHAEFER,

Plaintiffs,

v.

CHIPPEWA COUNTY MUNICIPALITY,

Defendant.

ORDER

03-C-226-C

This is a civil action for injunctive and monetary relief in which plaintiffs complain that defendant denied them their Fourteenth Amendment constitutional right to due process in a state court proceeding. Because plaintiffs paid the full filing fee, it is not proper to review the legal merits of their complaint before it is served on the defendant and defendant has had an opportunity to respond. Therefore, I express no opinion at this time whether plaintiffs' claim is legally frivolous. However, I am required to point out that plaintiffs' complaint is defective in its form. Plaintiff Deborah Schaefer has not signed it. See Fed. R. Civ. P. 11(a) ("every pleading . . . shall be signed by the party"). Under Rule 11, an unsigned paper must be stricken unless omission of the signature is corrected promptly after being called to the attention of the party. Therefore, plaintiff Deborah Schaefer may have two weeks, or until May 22, 2003, in which to sign the complaint.

After the complaint is signed by both plaintiffs, a summons and a copy of the corrected complaint must be served on the defendant. Under Fed. R. Civ. P. 4(m), a plaintiff has 120 days after filing a complaint in which to serve the defendant. However, that is an outside limit. This court requires that plaintiffs act diligently in moving their case to resolution. If plaintiffs act promptly, they should be able to serve their complaint on the defendant well before the deadline for doing so established in Rule 4.

To guide plaintiffs in the procedure for serving a complaint on a municipality, I am enclosing copies of Fed. R. Civ. P. 4 and Wis. Stat. § 801.11(4). (Plaintiffs should note particularly Rules 4 (c), (j)(2) and (l).) In addition, I am enclosing summons forms. Plaintiffs should note that proof of service must be filed with the court after service has been accomplished. The back of the summons form provides space in which the person serving the defendant can attest to the time, place and manner in which service of process was made.

Before undertaking the task of serving the summons and complaint, plaintiffs may want to consider whether they have named as a defendant an entity capable of being sued and whether their claim is one that a federal court can entertain.

ORDER

IT IS ORDERED that plaintiff Deborah Schaefer may have until May 22, 2003, in which sign the complaint in this case. If, by May 22, 2003, plaintiff fails to cure the signature defect, she will be stricken as a plaintiff in the case.

Further, IT IS ORDERED that plaintiffs are to file proof that they served a summons and their signed complaint on the defendant as soon as service has been accomplished. If, by July 8, 2003, plaintiffs fail to submit proof of service as required by Fed. R. Civ. P. 4(l) or explain their inability to do so, then the clerk of court is directed to enter judgment dismissing this case without prejudice for plaintiffs' lack of prosecution.

Entered this 8th day of May, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge