

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

SOUVANNASENG BORIBOUNE,
ANTHONY CALIPH STEVENS'EL,
DONDRAS L. HOUSE and EFRAIN
CAMPOS,

Petitioners,

v.

GERALD BERGE, PETER HUIBREGSTE,
VIKI SEBASTION, ELLEN K. RAY and
KELLY COON, as does their individual
capacities,

Respondents.

Petitioners Souvannaseng Boriboune and Anthony Stevens'El have moved to amend the complaint in this action. That request will be denied as premature.

As an initial matter, I note that petitioners Boriboune and Stevens'El do not show that they sent a copy of their motion to petitioners House and Campos as they are required to do pursuant to Fed. R. Civ. P. 5. In the future, this court will ignore submissions filed by one petitioner that do not either include the signature of each petitioner named as a party in the lawsuit or show that the filing was served on the petitioners who have not signed the

motion.

Second, it is too early for petitioners to move to amend the pleading in this case. In this court, parties are not allowed to amend a pleading by simply adding to or subtracting from the original pleading in subsequent filings scattered about the docket. If petitioners wish to amend their complaint, they must file a proposed amended complaint that will completely replace the original complaint. Moreover, because there can be only one operative complaint in the case, an amended complaint cannot be signed by fewer than all of the petitioners proceeding in a group action. At this time, the deadline has not yet passed for each petitioner named in the caption of the original complaint to advise the court whether he wishes to remain a party in this action. Nevertheless, even at this early date, petitioner Dondras House has written to confirm his desire to pursue his claims. Therefore, if petitioners Boriboune and Stevens'El believe amendments to the original complaint are necessary, they will have to obtain petitioner House's agreement to file a proposed amended complaint (and petitioner Campos's agreement as well, if Campos decides to remain a party to this action), provide him (and Campos) with a copy of the proposed amended pleading and obtain House's (and Campos's) signature on the proposed amended pleading before submitting it to the court.

In addition, petitioners should consider whether they wish to propose amendments to their complaint before the court has screened it to determine whether one or more claims

must be dismissed under 28 U.S.C. § 1915(e)(2) and whether the claims that are permitted to go forward, if any, are properly joined in a group action or should be severed under Fed. R. Civ. P. 20.

One final matter requires attention. Although petitioner House has expressed his desire to continue to prosecute this lawsuit, he has informed the court that he is presently residing at 3046 N. 28th St. in Milwaukee, WI, a private address. His release from prison presents difficulties in complying with the directive of the Court of Appeals for the Seventh Circuit in its order of remand to collect a full filing fee from each petitioner. Because House was a prisoner when he filed this case, he is required under the 1996 Prison Litigation Reform Act to pay an initial partial payment of the filing fee and the remainder of the fee in monthly installments. 28 U.S.C. § 1915(a). This means that he will have to arrange with the institution in which he was previously confined to obtain a trust fund account statement for the six-month period immediately preceding his release so that I can assess him an initial partial payment of the filing fee. How the remainder of the fee is to be collected is a matter that can be addressed after the determination has been made whether any of his claims survive the screening order. Alternatively, petitioner House can pay the \$150 filing fee in full. If petitioner House neither submits the required trust fund account statement or the full filing fee, I will deny his request for leave to proceed in forma pauperis for his failure to show that he is entitled to indigent status.

ORDER

IT IS ORDERED that the motion to amend the complaint in this action filed by petitioners Souvannaseng Boriboune and Anthony Stevens'El is DENIED as premature.

Further, IT IS ORDERED that petitioner House may have until February 21, 2005, in which to submit a trust fund account statement for the six-month period immediately preceding his release from prison so that he may be assessed an initial partial payment of the fee for filing his claims. Alternatively, petitioner House may have until February 21, 2005, in which to pay the \$150 filing fee. If, by February 21, 2005, petitioner neither pays the filing fee, submits a trust fund account statement or explains his failure to do so, I will deny him leave to proceed in the group action for his failure to show that he qualifies for indigent status.

Entered this 31st day of January, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge