

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

KENNETH PAUL SARAUER,

Plaintiff,

v.

Wisconsin Department of Corrections:
MATHEW FRANK, JON LITSCHER,
SM PUCKETT, SHARON ZUNKER, SANDRA
HAUTAMAKI, JOHN RAY, CINDY O'DONNELL,
NICOLE BELK and PAULA ARMENTROUT;
Oakhill Correctional Institution:
RICHARD VERHAGEN, JAMES PARISI,
DENNIS CLARK, DEBBIE LANCE,
JOSEPH MUSACCHIO, JAN MINK,
LT. SCANLON, JOANN ARNDT, DR. VIJOYA
DASGUPTA, DR. JAMES THORPE, TODD
CRONIN and ELAINE WHEELER,

Defendants.

ORDER

04-C-273-C

In an order dated May 12, 2004, I denied plaintiff's motion to amend his complaint to replace a table of contents for one that he claimed already existed in the complaint and to add exhibits to the complaint. I explained to plaintiff that his table of contents was not useful for a number of reasons and that the submission of evidentiary materials was proper only in relation to motions for a preliminary injunction or summary judgment, or at trial,

and not as attachments to a complaint, which is to be simple, concise and direct.

Now plaintiff has filed a second motion to amend the pleadings. This time, he wants to withdraw the exhibits to the complaint so as to simplify the pleading. In addition, he wants to increase the monetary relief he seeks from defendants Debbie Lance, Nicole Belk, and Dennis Clark and request injunctive relief against defendant Belk. Finally, he asks that the court order defendant Clark to reimburse him for the cost of serving his complaint on him. I construe this last part of plaintiff's proposed "amended complaint" as a motion pursuant to Fed. R. Civ. P. 4(d)(5) for recovery of costs incurred in personally serving the complaint in this case on defendant Clark.

With respect to plaintiff's request to amend his demand for relief, the document plaintiff titles "Amended Complaint" is not a document that could replace the original complaint, as it should be. Instead, plaintiff simply describes what he wants subtracted from, added to, and changed in his request for relief. Ordinarily, it is this court's practice to require that a proposed amended pleading replace the original complaint. This is to avoid the confusion that arises when there is an original pleading and then secondary documents adding to, subtracting from, and changing the original complaint submitted at different times located throughout the file. However, in this one instance, because plaintiff's changes are directed entirely at his request for relief and do not affect the substantive allegations of the complaint in any way, I will allow him to incorporate the changes listed in the "Amended Complaint" by appending it to the original complaint.

With respect to plaintiff's motion for recovery of costs incurred in personally serving the complaint on defendant Dennis Clark, plaintiff contends that Clark refused to sign and return a waiver form forwarded to him at the New Lisbon Correctional Institution. Subsequently, plaintiff hired the Mauston Sheriff's Department to make personal service of the complaint upon Clark. If plaintiff complied with the procedures set out in Rule 4(d)(2) for obtaining waiver of service of a summons and defendant Clark neglected his duty to save the costs of service, then plaintiff will be entitled to recover appropriate costs. Before I order defendant Clark to pay such costs, however, I will permit him to be heard on the motion.

ORDER

Accordingly, IT IS ORDERED that plaintiff's motion to amend his complaint to remove the exhibits and alter the request for relief as set out in the document titled "Amended Complaint" is GRANTED. The "amended complaint" is to be considered an addendum to the original complaint.

Further, IT IS ORDERED that plaintiff may have until June 28, 2004, in which to submit proof of the costs he incurred in serving defendant Clark with a summons and complaint. Defendant Clark may have until July 12, 2004, in which to serve and file objections to plaintiff's motion to recover costs. Plaintiff may have until July 23, 2004, in

which to serve and file a reply.

Entered this 15th day of June, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge