

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

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DAVID S. FREDERICK,

Plaintiff,

v.

WISCONSIN DEPARTMENT OF CORRECTIONS,  
MATTHEW J. FRANK, BUREAU OF CLASSIFICATION  
AND MOVEMENT, STEPHEN J. PUCKETT,  
OSHKOSH CORRECTIONAL INSTITUTION,  
MARGARET ALEXANDER, XYZ INSURANCE CO.,  
ET. AL.,

Defendants.  
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ORDER

04-C-684-C

Plaintiff David S. Frederick, a prisoner incarcerated currently at the Oshkosh Correctional Institution in Oshkosh, Wisconsin, seeks leave to proceed against defendants Wisconsin Department of Corrections, Matthew J. Frank, the Bureau of Classification and Movement, Stephen J. Puckett, the Oshkosh Correctional Institution, Margaret Alexander and XYZ Insurance Co. Plaintiff alleges that defendants violated his rights under 42 U.S.C. § 1983, 28 U.S.C. § 1343(3) and (4), the Rehabilitation Act, Title II of the Americans with Disabilities Act and various Wisconsin statutes. Although plaintiff has paid the fee for filing

his complaint, because plaintiff is a prisoner his complaint must be screened pursuant to 28 U.S.C. § 1915A and dismissed if his claims are frivolous, malicious, not claims upon which relief may be granted or if plaintiff seeks monetary relief from a defendant who is immune from such relief. Jurisdiction is present. 28 U.S.C. § 1331.

Plaintiff's complaint comprises 185 paragraphs of largely unintelligible assertions. It is impossible to make out what each defendant is alleged to have done, when they did it, what federal or constitutional right might be at stake and what plaintiff wishes this court to do about whatever it is that he is complaining about. Fed. R. Civ. P. 8(a)(2) requires a complainant to make a "*short and plain* statement of the claim showing that the pleader is entitled to relief" (emphasis added). In addition, Fed. R. Civ. P. 8(e) requires each averment of a complaint to be "simple, concise, and direct." Finally, Fed. R. Civ. P. 10(b) requires a complainant to allege facts in numbered paragraphs that relate to a single set of circumstances and to separate each constitutional or federal law claim into separate counts to make the complaint more clear. Plaintiff's complaint does not follow these rules. Therefore, it will be necessary for him to file an amended complaint that conforms to the rules before I can screen the complaint pursuant to 28 U.S.C. § 1915A.

In revising his complaint, plaintiff should note that the Wisconsin Department of Corrections, the Bureau of Classification and Movement and the Oshkosh Correctional Institution may not be proper defendants. Neither a state nor a state agency is a "person"

within the meaning of 42 U.S.C. § 1983 and thus cannot be sued under that statute. Will v. Michigan Department of State Police, 491 U.S. 58 (1989); Ryan v. Illinois Department of Children and Family Services, 185 F.3d 751, 758 (7th Cir. 1999). It is of no consequence that plaintiff may ask for injunctive relief. If a plaintiff wishes to obtain injunctive relief, he may sue a public official in his or her official capacity. Powers v. Summer, 226 F.3d 815, 819 (7th Cir. 2000). Furthermore, the Oshkosh Correctional Institution is not a suable entity. The prison is incapable of accepting service of plaintiff's complaint or responding to it.

#### ORDER

IT IS ORDERED that plaintiff may have until October 29, 2004, in which to submit a revised complaint that is in compliance with the Federal Rules of Civil Procedure. If plaintiff fails to submit a revised complaint by that date, I will dismiss his complaint without prejudice to his filing a new complaint at a later date.

Entered this 13th day of October, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge