

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

GEORGE J. LAZARIS,

Plaintiff,

v.

FERN SPRINGS, DR. ANKARLO,
DR. LARSON, MATTHEW FRANK,
CPT. TEGEL and JANE DOE,

Defendants.

ORDER

04-C-844-C

Plaintiff George Lazaris submitted a complaint for filing in this case in November, 2004 and paid the filing fee. On January 31, 2005, I screened plaintiff's complaint pursuant to 28 U.S.C. § 1915A and stayed a decision whether to permit plaintiff to proceed on his claims pending his submission of a supplement to the complaint. Plaintiff filed the supplement and on March 25, 2005, I allowed him to proceed on four claims. In the March 25 order, I told plaintiff that he was responsible for serving the defendants with his complaint and I supplied him with copies of his complaint for that purpose. Subsequently, plaintiff wrote to the court complaining that the copies he had received for service did not include the attachments he submitted with his supplement to the complaint. On April 27,

2005, I entered an order advising plaintiff that although documentation of a prisoner's efforts to exhaust his administrative remedies had not been considered a part of his complaint, I had considered as part of the complaint certain other documents plaintiff has attached to his submissions. In an effort to insure that plaintiff possessed and defendants would be served the precise document constituting the operative pleading in this case, I sent plaintiff seven additional copies of the document this court considers as his complaint. I told plaintiff that he was to proceed promptly in executing service of process pursuant to the procedures described in the memo I sent him with the March 25 order.

Now, two months later, the court has not received notification from plaintiff that he has accomplished service of his complaint on the defendants. If plaintiff asked the defendants to waive service of a summons pursuant to Fed. R. Civ. P. 4(d) and he has received signed waiver forms from the defendants, he should submit a copy of each of the waivers to this court so that the time within which the defendants are to answer plaintiff's complaint can be calculated. (A defendant who timely returns a waiver is not required to serve an answer to the complaint until 60 days after the date on which the request for waiver of service was sent. Fed. R. Civ. P. 4(d)(3)). If any defendant failed to return a properly made request for waiver of service of the summons, then plaintiff must obtain a summons from the clerk of court and arrange for personal service of the complaint upon the defendant.

Plaintiff should be aware that whether he obtains the agreement of the defendants to

waive service of a summons or serves them personally with a summons and complaint, service of his complaint must be complete within 120 days of the date his complaint was filed with this court. Fed. R. Civ. P. 4(m). Where, as here, the plaintiff may not proceed with his action until his complaint has been screened pursuant to 28 U.S.C. § 1915A, the date the complaint is considered to have been filed is the date on which leave to proceed with the action has been granted. Thus, in this case, the 120-day time limit began running on March 25, 2005 and will end on July 25, 2005. If, by July 25, 2005, plaintiff fails to submit proof of service of his complaint on the defendants, I must dismiss this action for plaintiff's failure to prosecute unless he shows good cause for his failure to accomplish service within the time allowed.

ORDER

IT IS ORDERED that plaintiff is to promptly submit proof of service of his complaint on the defendants.

Further, IT IS ORDERED that if, by July 25, 2005, plaintiff fails to submit proof of service of his complaint on the defendants or show cause for his failure to do so, the clerk of court is directed to enter judgment dismissing this case without prejudice to plaintiff's

filing a new action against the defendants at a later date.

Entered this 28th day of June, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge