

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

TIMOTHY MAYMON,

Petitioner,

v.

MONONA CATERING, MATT REICHARD,
SUZIE REICHARD, KIM NELSON,
DIANE BUCHANAN, SHAWN SCHMIDT,
DARRON PENROD and GREG DAVIS,

Respondents.

ORDER

05-C-221-C

This is a proposed civil action for monetary relief in which petitioner Timothy Maymon asks for leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. From the affidavit of indigency accompanying petitioner's proposed complaint, I conclude that petitioner is unable to prepay the full fees and costs of instituting this lawsuit.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, if a litigant is requesting leave to proceed in forma pauperis, the court must deny leave to proceed if the action is frivolous or malicious, fails to state a claim on which relief may be granted or seeks money

damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

In his complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

Petitioner was employed by respondent Monona catering between at least October 2003 and April 2004. Respondent Kim Nelson is the owner of Monona Catering, respondent Matt Reichard is the executive chef and respondent Suzie Reichard is the human resource manager. In infer that respondents Diane Buchanan, Shawn Schmidt, Darron Penrod and Greg Davis worked at Monona Catering also.

In October 2003, petitioner began filing complaints. Shortly thereafter, the number of hours petitioner was assigned to work began to decline. He asked for day shifts but was assigned to work at night. Overtime hours were being given to employees who did not speak English and promotions were given to employees with less seniority than petitioner. Petitioner felt a change in atmosphere. He noticed that his hours went down when he complained but that he had steady work so long as he kept quiet.

On March 17, 2004, petitioner had a telephone conversation with a union representative. Later that afternoon, someone posted a notice indicating that employees were not to use the business phone unless on break.

DISCUSSION

After reviewing petitioner's complaint as carefully as I can, I cannot allow his case to proceed at this time. The allegations petitioner has made in his complaint are too vague to put respondents on notice of the nature of his claim or claims against them or to provide this court with the ability to determine whether the wrongs about which he complains make out a federal claim. The general rule is that a complaint need contain only a short and plain statement of the wrongs alleged. Fed. R. Civ. P. 8. It does not need to contain "all of the facts that will be necessary to prevail." Hoskins v. Poelestra, 320 F.3d 761, 764 (7th Cir. 2003). It is not necessary for a petitioner to identify legal theories, cases or statutes. Shah v. Inter- Continental Hotel Chicago Operating Corp., 314 F.3d 278, 282 (7th Cir. 2002). However, the complaint must give the respondents sufficient notice of the claim so that they are able file an answer. Higgs v. Carver, 286 F.3d 437, 439 (7th Cir. 2002). In addition, there must be some indication that the case is one that a federal court can entertain. Fed. R. Civ. P. 8(a)(1).

The gist of petitioner's grievance appears to be that he believes he was given fewer and less desirable hours than other workers and denied promotions because of certain complaints he was making. However, nothing in his complaint gives any indication of what he complained about or to whom he complained. See, e.g., Higgs, 286 F.3d at 439 (minimal pleading requirement in retaliation case includes identification of the allegedly protected

conduct). This information is necessary to determine whether petitioner has stated a federal claim at all and if so, what kind of claim it is.

Because there are federal statutes prohibiting retaliation for certain limited classes of complaints, I will give petitioner until May 31, 2005 in which to supplement his complaint with statements describing the nature of his complaints and the identity of the person or agency with whom he lodged his complaints. If petitioner does not respond to this order by May 31, 2005, I will dismiss his complaint for failure to state a claim on which relief may be granted.

ORDER

IT IS ORDERED that a decision is STAYED on petitioner Timothy Maymon's petition to proceed in forma pauperis. Petitioner may have until May 31, 2005 in which to file a supplement to his complaint providing a more detailed statement of the complaints he made and to whom he made them.

Entered this 17th day of May, 2005.

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