

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

WENDELL DWAYNE O'NEAL,
202 Honorway
Madison, Alabama 35758,

Petitioner,

v.

UNKNOWN SUPERAMERICA EMPLOYEES,
38th & Freemont Ave., Minneapolis, Mn.,
TWO UNKNOWN MINNEAPOLIS
POLICE OFFICERS, MINNEAPOLIS
POLICE DEPT., CITY OF MINNEAPOLIS,
Minneapolis, Minnesota, 55401,
UNKNOWN HENNEPIN COUNTY
ASST. D.A., HENNEPIN COUNTY D.A. OFFICE,
Gov. Centre, 300 S., 6th Street, Minneapolis,
Minnesota, UNKNOWN HENNEPIN
COUNTY DEPUTY SHERIFF, HENNEPIN
COUNTY SHERIFFS DEPT., COUNTY OF
HENNEPIN, Minneapolis, Mn., Jointly/Severally/
Officially, as Agents/Agencies/Municipalities,

Respondents.

ORDER

06-C-40-C

This is a proposed civil action for monetary relief under 42 U.S.C. §§ 1983 and 1985(3). Petitioner Wendell Dwayne O'Neal asserts a variety of claims against respondents

in connection with his arrest in July 2004 in Minneapolis, Minnesota. Petitioner has filed a proposed complaint, dkt. #2, and a proposed amended complaint, dkt. #4. The court's docket indicates that both of these documents were filed on January 2, 2006. Because the proposed amended complaint contains all of the allegations in the proposed complaint plus several new allegations, I will consider the proposed amended complaint to be the operative pleading in this case.

Petitioner has named the following individuals as proposed defendants in this case: SuperAmerica employees; Minneapolis police officers; an assistant district attorney in Hennepin County, Minnesota; and a Hennepin County deputy sheriff. Petitioner has not provided the names for any of these individuals in his proposed amended complaint.

Fed. R. Civ. P. 10(a) requires a complaint to include "the names of all the parties." This requirement serves two purposes. First, it insures that the notice pleading requirements of the Federal Rules of Civil Procedure are met. Higgs v. Carver, 286 F.3d 437, 439 (7th Cir. 2002) (Rule 8 requires enough notice so that defendant can file answer). Second, it insures that a plaintiff will be able to serve his complaint. 2 James Wm. Moore et al., Moore's Federal Practice § 10.02[2][d] (3d ed. 2005). Although there is no prohibition on identifying defendants as "John Doe" or "unknown," the practice is not favored. Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980). However, a litigant is allowed to designate defendants as "unknown" if (1) the complaint contains allegations that would permit

identification of the defendants after reasonable discovery and (2) the plaintiff has made reasonable efforts to learn the names of the unknown defendants before filing suit. Fed. R. Civ. P. 11(b)(3) (pleadings may be presented to court only after reasonable investigation of underlying facts); Estate of Rosenberg v. Crandell, 56 F.3d 35, 37 (8th Cir. 1995); Hastings v. Fidelity Mortgage Decisions Corp., 984 F. Supp. 600, 605 (N.D. Ill. 1997).

It is likely that petitioner's allegations provide enough information about the unknown proposed defendants to identify them after reasonable discovery. Nonetheless, I do not believe it would be wise to screen petitioner's complaint until he has shown the court that he has made reasonable efforts to find the names of the unknown defendants he wishes to sue. If I screened the proposed amended complaint and granted petitioner leave to proceed against an unknown defendant, how would petitioner accomplish service of process on that individual? No answer to this question appears in any of the documents petitioner has submitted in this case. Therefore, I will dismiss his complaint without prejudice and allow petitioner time to file a new complaint listing the individual defendants by their names. If petitioner is unable to learn their names, he may list the individuals as "John Doe" or "unknown." However, if he chooses this latter option, petitioner must submit with his new complaint an affidavit listing the steps he took to learn the individual defendants' names.

ORDER

IT IS ORDERED that petitioner Wendell Dwayne O'Neal's proposed amended complaint is DISMISSED without prejudice. Petitioner may have until April 4, 2006 to submit a new complaint that (1) lists the individual defendants by name or (2) lists them as "John Doe" or "unknown" and includes an affidavit describing the steps petitioner took to learn their names. If petitioner does not file a new complaint by April 4, 2006, I will direct the clerk of court to close this case.

Entered this 14th day of March, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge