

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

MICHAEL LEE RAUNIO,

Plaintiff,

v.

STEPHANIE HAHN,

Defendant.

ORDER

06-C-163-C

This is a civil action brought under 42 U.S.C. § 1983 in which plaintiff contends that defendant Stephanie Hahn deliberately failed to insure that his medication needs and lower bunk restriction were made known to officials at the Marathon County jail when he was transferred there for a period of time in October 2005. For the second time since I granted plaintiff leave to proceed in this action on April 14, 2006, plaintiff has filed documents that appear to be intended as evidence in support of his claim against defendant Hahn. Once again, I am returning those documents to plaintiff so that he may submit them at a later time in connection with a motion requiring evidentiary support or at trial. As I told plaintiff earlier, evidentiary materials are not properly made a part of his complaint. Moreover, the court is not a repository for evidence plaintiff is gathering to prove his claim. As plaintiff

uncovers evidence related to his claim, it is his responsibility to keep the evidence in his possession until it is needed. Ordinarily, evidence is not needed in a lawsuit until a party files a motion for summary judgment or until the case goes to trial.

In addition to submitting evidentiary materials, plaintiff has filed a letter dated April 25, 2006, in which he asks the clerk of court to tell him whether he can amend his complaint to add two new defendants. In particular, plaintiff asks whether he can sue two individuals at the Marathon County jail for failing to question the whereabouts of two important medications that were listed on plaintiff's transfer sheet but did not accompany plaintiff to the jail. If plaintiff believes he can prove that the failure of two Marathon County officials to follow-up on the whereabouts of his medications when he arrived at the jail was a deliberate and malicious act intended to harm plaintiff and that he can prove that the officials knew that plaintiff would face a risk of serious harm if he did not have the medications, he is free to file a motion to amend his complaint to add the Marathon County jail officials. He should not amend his complaint if he believes that the failure to follow-up was a mistake or an oversight. As I told plaintiff in the order allowing him to proceed against defendant Hahn, neither innocent mistakes or negligent acts of prison or jail officials amount to violations of a person's constitutional rights.

If plaintiff decides to file a motion to amend his complaint, it must be accompanied by plaintiff's proposed amended complaint, which must be in a specific format. In

particular, plaintiff will have to rewrite his original complaint so that it contains all of the allegations he made in his original complaint, shows the proposed new defendants in the caption along with defendant Stephanie Hahn, and includes appropriate paragraphs in the body of his complaint setting forth his allegations of wrongdoing against the new defendants. To assist the court in easily identifying any new allegations, plaintiff should underscore or highlight the new allegations. In sum, if the court allows plaintiff to proceed on the amended complaint, the amended complaint must be a pleading that will replace the original complaint in its entirety.

A second matter requires attention. The Attorney General's office has not accepted service of plaintiff's complaint on behalf of defendant Hahn because she is no longer employed by the Department of Corrections. Therefore, the clerk of court has prepared a Marshals Service and summons form for defendant Hahn, and is forwarding a copy of plaintiff's complaint and the forms to the United States Marshal for service on her.

In completing the Marshals Service form for defendant Hahn, the clerk has not provided a forwarding address because this information is unknown to the court. It will be up to the marshal to make a reasonable effort to locate defendant by contacting her former employer (in this case, the Department of Corrections) or conducting an internet search of public records for the defendant's current address or both. Sellers v. United States, 902 F.2d 598, 602 (7th Cir. 1990) (once defendant is identified, marshal to make reasonable effort

to obtain current address). Reasonable efforts do not require the marshal to be a private investigator for civil litigants or to use software available only to law enforcement officers to discover an address for a defendant whose whereabouts are not discoverable through public records.

Also, for plaintiff's information, in Sellers, the court of appeals recognized the security concerns that arise when prisoners have access to the personal addresses of former or current prison employees. Sellers, 902 F.2d at 602. For this reason prison employees often take steps to insure that their personal addresses are not available in public records accessible through the internet. If the marshal is successful in obtaining the defendant's personal address, he is to maintain the address in confidence rather than reveal it on the marshals service forms, because the forms are filed in the court's public file and mailed to the plaintiff after service is effected.

ORDER

IT IS ORDERED that the clerk of court return to plaintiff the evidentiary materials he has submitted to the court, so that he may resubmit them at a later time in connection with a motion for summary judgment or at trial. A copy of the documents will be retained in the court's file for record purposes only.

Further, the clerk of court is requested to prepare a Marshals Service and summon

form for defendant Hahn and forward a copy of plaintiff's complaint and the completed forms to the United States Marshal for service on her.

Finally, to the extent that plaintiff may have been moving in his letter of April 25, 2006, to amend his complaint to add defendants, the motion is DENIED without prejudice to his refiling his motion, together with a proposed amended complaint, if he believes such a motion is appropriate.

Entered this 15th day of May, 2006.

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