IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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WENDELL DWAYNE O'NEAL,
1738 Roth Street,
Madison, Wisconsin 53703,

ORDER

Petitioner,

06-C-242-C

v.

PORCHLIGHT, INC., 306 N. Brooks Street, Madison, Wisconsin 53754; SAFEHAVEN, INC., 1738 Roth Street, Madison, Wisconsin 53703; JIM L. WILLIS, 116 W. Washington Blvd., Madison, Wisconsin 53703; STEVE SCHOOLER, CARLA JAMISEN, 306 N. Brooks Street, Madison, Wisconsin 53754; CHRIS, LAST NAME UNKNOWN, 306 N. Brooks Street, Madison, Wisconsin 53703,

Respondents.

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This is a proposed civil action for monetary relief brought pursuant to various civil rights statutes, including 42 U.S.C. §§ 1981 and 1983. Petitioner Wendell Dwayne O'Neal seeks leave to proceed without prepayment of fees and costs or providing security for such fees and costs, pursuant to 28 U.S.C. § 1915. From the affidavit of indigency accompanying petitioner's proposed complaint, I conclude that petitioner is unable to prepay the 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), and grant leave to proceed if there is an arguable basis for a claim in fact or law. Neitzke v. Williams, 490 U.S. 319 (1989). However, if the action is frivolous or malicious, fails to state a claim upon which relief may be granted or seeks monetary relief against a defendant who is immune from such relief, the case must be dismissed promptly pursuant to 28 U.S.C. § 1915(e)(2).

Petitioner is not a stranger to this court. This is the fourth lawsuit he has filed here. As with his other complaints, the allegations in his proposed complaint in this case are difficult to decipher because petitioner has not set out a coherent narrative of facts. Instead, he has peppered his scattershot allegations with irrelevant or unclear words and phrases. However, I do not believe that he would be able to present a more coherent set of allegations if I dismissed his complaint for failure to comply with Fed. R. Civ. P. 8. Therefore, I will screen his complaint as presented. From his proposed complaint and the documents attached thereto, I understand petitioner to be alleging the following.

ALLEGATIONS OF FACT

A. Parties

Respondent Porchlight, Inc., operates several homeless shelters in Madison,

Wisconsin. Respondent Safe Haven is a shelter for individuals with mental health problems run by respondent Porchlight. Respondent Steve Schooler is president of respondent Porchlight. Respondent Jim Willis is employed by respondent Porchlight and works at its temporary shelter located at 116 W. Washington Blvd., Madison, Wisconsin. Respondent Carla Jamisen is employed by respondent Porchlight as manager of respondent Safe Haven. Respondent Chris (last name unknown) works at the temporary emergency shelter.

B. Events at Temporary Shelter

Petitioner arrived in Madison in early November 2005. On November 7, 2005, he obtained temporary housing at respondent Porchlight's temporary shelter. In addition, he was given an application and an interview for possible housing at respondent Safe Haven. Petitioner stayed at respondent Safe Haven for an unspecified period of time between 2001 and 2003.

Respondent Porchlight's "Board of Directors" intentionally overcrowded the temporary shelter, at times to triple its capacity, during petitioner's stay. This prompted petitioner to visit the office of state representative Mark Pocan, where he complained about the crowded conditions, verbal abuse of residents and arbitrary denial of shelter by the shelter's staff and the shelter's "multiple city code violations." After "some believed governmental authority" contacted respondent Schooler, Schooler contacted Glenn Braun,

a staff member at the emergency shelter, who made an announcement to the shelter's residents before allowing them inside. Braun referred to retaliation against a "snitch" who had complained to the legislature. This caused agitation among the residents, who feared being denied entrance during the winter months. Petitioner identified himself to Braun as the person who had complained.

After petitioner identified himself as the source of the complaints, respondent Willis "aggressively" confronted petitioner while he was outside the shelter smoking a cigarette. Respondent Willis prohibited petitioner from re-entering the shelter and denied him a chance to retrieve his property. Petitioner called the Madison police. When they arrived, respondent Willis falsely accused petitioner of causing a disturbance. Also, respondent Willis told the police that he had filed a police report previously that supported his allegations. Petitioner was forced to sleep in a bus shelter.

In a police report filed by an Officer York and dated November 26, 2005, the officer reported

> On 11-26-05, disp. to Grace shelter ref an uncooperative person & disputed with staff member. Upon arrival O'Neal stated he complained to a state government employee today about how staff at the shelter treat the clients and tonight he was told to leave the bldg by Willis. Willis stated when O'Neal entered the bldg O'Neal said to Willis "get out of my way." Willis stated O'Neal has been at the shelter about two weeks and has repeatedly been disrespectful toward various staff members and police have been called due to his behavior. Willis stated O'Neal is not welcome tonight but may return tomorrow. O'Neal removed his bag from the building & left the area without

incident.

In another police report dated November 26, 2005 Sgt. Shawn Engel reported

> On 11/26/05, I was sent down to the City-County Building to meet with O'Neal, ref. an incident he was involved in earlier. O'Neal had requested to see a supervisor ref. the incident he was involved in at the shelter. Upon my arrival at the City-County Building, I met O'Neal in the Carroll St. entrance to the building. O'Neal stated that he disagreed with how things were handled at the men's shelter. He stated that he had called for police assistance after he was asked to leave by the worker at the shelter. When Officer Meredith York arrived on scene, O'Neal stated she went and talked with the shelter worker and ended up taking his side vs. listening to O'Neal's complaint.
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> In talking with O'Neal, he said he felt like he had been discriminated against as well as assaulted. When asked about the assault he said not physically but more mentally. O'Neal stated that the worker at the shelter has been telling several subjects to leave for no apparent reason other than just dislike. According to O'Neal, he was also asked to leave this date, but said he could return to the shelter tomorrow. O'Neal was concerned he had no place to stay for the night and would have to sleep out in the cold. Allegedly O'Neal contacted a state representative to make them aware of his treatment at the shelter. O'Neal prepared a document which he wanted to have included in Meredith York's original report. I took this document from him and told him I would include it with the original case number.
>
> In talking with O'Neal, he said he did not believe that Officer York did a very good job at investigating the situation. I told O'Neal that it isn't our job to take sides in these types of matters. We only respond to assist the shelter in removing people whom they believe need to be removed. We do not have the authority to demand that the shelter keep certain people and not others. I told him that there was no criminal violation involved, and therefore we were acting in an assistant capacity only. He said he understood this.
>
> I further told O'Neal that it is not up to us to take sides in this situation. I further stated that the shelter has every right to ask people to leave whom they feel are creating problems. I further instructed O'Neal to seek out the shelter's

> management Monday to voice his concerns with them. O'Neal stated he was planning on doing so and further stated that he was going to be suing the shelter for his mistreatment.
>
> It is my belief that there was no complaint against Officer York specifically. O'Neal appeared to be more upset with how he was treated by the shelter and was somewhat concerned that Officer York would take the shelter's side. After I explained to him that we are not there to take sides, just to assist in removing the people the shelter wants removed, he seemed satisfied with that.

Respondent Schooler made certain "communications" to other employees of respondent Porchlight, which caused them to retaliate against petitioner by denying him shelter at the temporary emergency shelter and at respondent Safe Haven. In addition, petitioner was the victim of "verbal and physical assaults" by respondent Willis and Marvin Pierce, a resident at the temporary shelter. Petitioner reported these incidents to the Madison Police Department and state officials, obtained an injunction and filed lawsuits against respondents.

Respondent Jamisen knows petitioner from his previous stay at respondent Safe Haven and through his contacts with "chemically addicted" individuals who reside at the facility. She "unsuccessfully sought to allege his involvement with them in drug usage" at respondent Safe Haven. In addition, respondent Jamisen knows that Marvin Pierce has stayed at respondent Safe Haven and the temporary shelter for the past ten years. Pierce has a history of assault and drug usage since 1985, yet he is allowed to "linger on its premises amongst its residents." Petitioner was offered drugs at respondent Safe Haven but declined;

his refusal contributed to his being physically assaulted and being threatened with death on February 8, 2006.

Petitioner "encountered a white male, initially unknown," who received shelter at the temporary shelter and at respondent Safe Haven before petitioner despite the fact that petitioner's application was submitted earlier.

Staff at respondent Safe Haven asked petitioner to meet with respondent Chris and complete an application for funding for temporary housing at a facility run by respondent Porchlight at 306 N. Brooks Street, Madison, Wisconsin. Petitioner submitted an application and was promised a "housing opportunity" before the end of his 90-day stay at the temporary emergency shelter. However, respondent Chris failed to return any of petitioner's telephone calls about availability at the facility on Brooks Street.

On February 23, 2006, petitioner lodged a second complaint about being denied temporary housing at the office of state representative Mark Pocan. This resulted in "contact" with respondent Schooler. On February 28, 2006, Glenn Braun denied him entry at the temporary shelter. Petitioner stayed at a hotel. Also, petitioner was denied housing by respondent Porchlight after he served respondent with a complaint and summons on May 1, 2006. Respondent Schooler advised Porchlight staff to disregard petitioner's housing applications.

Minnesota state government officials informed respondents before November 7, 2005

that petitioner might seek shelter in their facilities. On February 27, 2006, the Minnesota Department of Probation issued a complaint against petitioner alleging two probation violations in order to "rescue" respondent Porchlight from lawsuits filed against it by petitioner. He was arrested on March 4, 2006, transported to Minnesota and released on March 16, 2006. The attorney representing respondents has moved to dismiss the cases petitioner filed against them in the Circuit Court for Dane County.

DISCUSSION

Petitioner invokes the following federal statutes in his proposed complaint: 42 U.S.C. §§ 1981, 1982, 1983, 1986, 1988 and 2000. I will discuss his allegations under each of these statutes separately.

A. 42 U.S.C. § 1981

Section 1981 provides that all "persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other." The statute "prohibits discrimination on grounds of race in the making and enforcing of

contracts." Vakharia v. Swedish Covenant Hosp., 190 F.3d 799, 806 (7th Cir. 1999). Petitioner alleges that respondents Porchlight and Safe Haven violated this statute because they allowed a white male to reside at the emergency shelter and at respondent Safe Haven before petitioner even though petitioner submitted an application for housing before the white male. Petitioner's claim appears to be that the white male's application was processed more quickly than his. He attributes the delay in processing his application to the fact that he is black and contends that the delay violated his right to contract. A delay in processing an application, without more, does not amount to an actionable injury, and petitioner concedes that he was able to stay at the emergency shelter starting on November 7, 2005. None of petitioner's other allegations implicate his right to contract. Therefore, he will be denied leave to proceed on a claim under § 1981.

B. 42 U.S.C. § 1982

Section 1982 provides that all "citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." The statute prohibits racial discrimination in property transactions. Morris v. Office Max, Inc., 89 F.3d 411, 413 (7th Cir. 1996). None of petitioner's allegations concern the sale or purchase of real property. The only allegation in petitioner's complaint that concerns personal property is his allegation

that on November 26, 2005, respondent Willis told petitioner he could not re-enter the temporary shelter and refused to allow him to retrieve his property. However, Officer York's report indicates that petitioner was able to retrieve his property from the temporary shelter before he left. Moreover, petitioner does not allege that respondent Willis refused to allow petitioner to retrieve his property because of his race.

Petitioner invokes section 1982 with respect to his allegation that the temporary shelter was overcrowded and that this caused "competitiveness for bedding, dinning [sic] and restroom space provisions." The meaning of this allegation is unclear, but crowded conditions at the temporary shelter do not support a cause of action under § 1982, even though the resources offered by the shelter were stretched thin as a result. Petitioner will be denied leave to proceed on a claim under § 1982.

C. 42 U.S.C. § 1983

Section 1983 provides a cause of action for individuals whose rights under federal law are violated by persons acting under color of state law. To state a claim under § 1983, petitioner must allege that an individual acting under color of state law deprived him of a right secured by the Constitution or federal law. Jones v. Wilhelm, 425 F.3d 455, 465 (7th Cir. 2005). None of the respondents in this case is a state actor and petitioner does not allege that any of them acted under color of state law. Therefore, his allegation that they

engaged in a "concerted, collaborated, constructive, and, or objective effort" to deny him shelter fails to state a claim.

However, petitioner alleges also that officials in the Minnesota Department of Probation charged him with violations of his probation in order to "rescue" respondent Porchlight from petitioner's civil actions pending against it in Madison, Wisconsin. I understand petitioner to allege that officials in Minnesota conspired with respondent Porchlight to deprive him of access to the courts in Madison by charging him with violations of his probation, having him arrested and transported to Minnesota. To state a claim for conspiracy, petitioner must identify the parties, general purpose and approximate date of the conspiracy. Loubser v. Thacker, 440 F.3d 439, 443 (7th Cir. 2006). Petitioner has identified respondent Porchlight but not the other party or parties to the conspiracy. The closest he comes is a reference to officials in the Minnesota Department of Probation. In addition, he has not alleged an approximate date for the conspiracy. At best, it is possible to infer that the conspiracy formed sometime between November 7, 2005, when unnamed officials in Minnesota notified respondents that petitioner might attempt to seek shelter in their facilities, and February 26, 2005, when the Minnesota Department of Probation charged petitioner with violations of his probation.

Aside from the fact that petitioner has not satisfied the pleading requirements for a civil conspiracy claim, the behavior he alleges is so improbable and fantastic that his

allegations are legally frivolous. In the other cases petitioner has litigated in this court, he has demonstrated a clear belief that law enforcement officials, prosecutors, judges and private citizens are conspiring constantly to injure him or prevent him from seeking redress in the courts. In O'Neal v. Atwal, 05-C-739-C, petitioner alleged that his public defender refused to pursue an appeal in a case in which petitioner had pled guilty because the public defender was conspiring with district attorneys and judges to cover up the fact that petitioner had been wrongfully convicted. In O'Neal v. Unknown Oakland Circuit Judge, 06-C-35-C, petitioner alleged that prosecutors and a judge in Michigan had conspired to convict him of breaking and entering and that officials in Minnesota and Michigan conspired to deny him due process of law because of his previous political activism. In O'Neal v. K.A., Super U.S.A., Inc., 06-C-40-C, petitioner alleged that convenience store employees conspired with police officers to arrest petitioner for attempted robbery even though video surveillance at the convenience store proved his innocence. Also, he alleged that prosecutors conspired to maliciously prosecute him for attempted robbery.

In screening the complaint of a litigant who requests leave to proceed in forma pauperis, district courts are authorized to deny leave to proceed if the litigant's allegations are frivolous. 28 U.S.C. § 1915(e)(2). Allegations are legally frivolous when they are "clearly baseless," meaning fanciful, fantastic, delusional, irrational, or wholly incredible. Denton v. Hernandez, 504 U.S. 25, 32-33 (1992). In light of petitioner's previous claims

of conspiracy, I conclude that his allegations in this case qualify as legally frivolous. As I have stated before, the allegations in petitioner's complaints, especially the allegations detailing the various conspiracies against him, have a paranoid quality that makes them impossible to accept as true. The conspiracies he alleges connect persons located in different states, some of whom are sworn to uphold the law. The number of conspiracies he has alleged, combined with the sheer improbability of his allegations, leads me to believe that petitioner is a person who ascribes conspiratorial motives to every individual who does or says something with which he disagrees. By continuing to stuff his complaints with outlandish and sensational conspiracy allegations, petitioner shows himself to be persistent but not credible. For these reasons, petitioner will be denied leave to proceed on a conspiracy claim under § 1983.

D. 42 U.S.C. § 1986

Section 1986 provides in part that

> Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented.

Petitioner invokes this statute in connection with his allegations that (1) respondents

Schooler and Porchlight failed to prevent the temporary shelter from becoming overcrowded and (2) respondent Jamisen failed to prevent petitioner from being denied housing at respondent Safe Haven. In order to state a claim under § 1986, petitioner must first state a claim under 42 U.S.C. § 1985, which prohibits conspiracies to deprive persons of constitutionally protected rights. Because I have determined that petitioner's allegations of conspiracy are legally frivolous, he cannot state a claim under § 1985. Therefore, his attempts to state a claim under § 1986 fail as well. Santistevan v. Loveridge, 732 F.2d 116, 118 (10th Cir. 1984); Robinson v. Fauver, 932 F. Supp. 639, 646 (D.N.J. 1996); Bieros v. Nicola, 839 F. Supp. 332, 336 (E.D. Pa. 1993). Accordingly, petitioner will be denied leave to proceed on a claim under § 1986.

E. 42 U.S.C. § 1988

Section 1988 is known most commonly for its attorney fees provision, § 1988(b), which authorizes courts to award attorney fees to prevailing parties in civil rights lawsuits. Section 1988 does not create or protect any right and does not establish a cause of action for the deprivation of any right protected by federal law. In all likelihood, petitioner cited § 1988 to preserve a claim for attorney fees. However, in the interest of clarity, I will state specifically that petitioner's allegations do not state a claim under § 1988.

F. 42 U.S.C. § 2000

Petitioner charges respondents Porchlight and Safe Haven with "retaliatory discrimination" under 42 U.S.C. § 2000 for denying him residency at respondent Porchlight's facilities. I understand petitioner to be referring to Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a, which prohibits discrimination in places of public accommodation. The statute provides that all persons "shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation . . . without discrimination or segregation on the ground of race, color, religion, or national origin." "The purpose of § 2000a is to eliminate 'the daily affront and humiliation involved in discriminatory denials of access to facilities ostensibly open to the general public.'" E.E.O.C. v. Chicago Club, 86 F.3d 1423, 1434 (7th Cir. 1996) (quoting Daniel v. Paul, 395 U.S. 298, 307-08 (1969)). The statute defines "place of public accommodation" to include "any inn, hotel, motel, or other establishment which provides lodging to transient guests." § 2000a(b)(1). Although no court has held that a homeless shelter qualifies as a "place of public accommodation," I will assume for purposes of this order that it does.

There is a jurisdictional hurdle that must be overcome before I can consider plaintiff's claim on its merits. Section 2000a-3(c) provides that

In the case of an alleged act or practice prohibited by this subchapter which

> occurs in a State, or political subdivision of a State, which has a State or local law prohibiting such act or practice and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no civil action may be brought under subsection (a) of this section before the expiration of thirty days after written notice of such alleged act or practice has been given to the appropriate State or local authority by registered mail or in person, provided that the court may stay proceedings in such civil action pending the termination of State or local enforcement proceedings.

This section "requires that Title II plaintiffs give notice to state or local authorities when a state or local law prohibits such discrimination and the state or local authority is authorized to grant or seek relief from such discrimination." Stearnes v. Baur's Opera House, Inc., 3 F.3d 1142, 1144 (7th Cir. 1993). Wis. Stat. § 106.52(3)(a)(2) prohibits any person from giving "preferential treatment to some classes of persons in providing services or facilities in any public place of accommodation or amusement because of sex, race, color, creed, sexual orientation, national origin or ancestry." The Wisconsin Department of Workforce Development is authorized to administer Wis. Stat. § 106.52. The statute authorizes the department to receive and investigate complaints and attempt to eliminate discrimination through informal consultation or formal hearings. Wis. Stat. § 106.52(4)(a)(1)–(3). If a hearing officer finds that discrimination has occurred, he is authorized to order remedial measures. Wis. Stat. § 106.52(4)(a)(4). In addition, the department is authorized to seek temporary injunctive relief in a case in which it determines that a complaint is supported by probable cause. Wis. Stat. § 106.52(4)(a)(5).

Because Wisconsin empowers an agency to investigate and remedy instances of discrimination with respect to public accommodations, petitioner's claim under 42 U.S.C. § 2000a is premature. Petitioner does not allege that he filed written notice of respondents' allegedly discrimination actions with the Department of Workforce Development and he has not attached any documentation to his complaint showing that he did so. Pursuant to § 2000a-3(c), he may not file suit under § 2000a until thirty days after he files written notice of the alleged discrimination. The Court of Appeals for the Seventh Circuit has held that the "requirements of Section 2000a-3(c) are jurisdictional and, unless those requirements are met, the federal courts do not have jurisdiction to decide the dispute." Stearnes, 3 F.3d at 1144.

ORDER

IT IS ORDERED that

1. Petitioner Wendell O'Neal's request for leave to proceed in forma pauperis on his claim that respondents Porchlight and Safe Haven denied him residency at respondent Porchlight's facilities in violation of 42 U.S.C. § 2000a is DISMISSED for lack of jurisdiction;

2. Petitioner's request for leave to proceed in forma pauperis is DENIED with respect to all other claims raised in this lawsuit; and

3. The clerk of court is directed to close the file.

Entered this 30th day of May, 2006.

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