

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

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DENNIS J. SHESKEY,

Plaintiff,

v.

MADISON METROPOLITAN SCHOOL  
DISTRICT (MMSD),

Defendant.  
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ORDER

06-C-0764-C

Plaintiff Dennis J. Sheskey is proceeding in this action on his claims that although he is disabled, he has been denied admission to a low impact aqua program offered by defendant because he does not meet the program's over 55 age eligibility requirements. Defendant has answered plaintiff's complaint and a preliminary pretrial conference has been held. At the preliminary pretrial conference, Magistrate Judge Stephen Crocker set a May 4 deadline within which to file amended pleadings and a December 21, 2007 discovery cutoff date. Now plaintiff has filed three separate documents.

The first document is titled "Plaintiff's Motion and Supporting Brief to Stay Proceedings and Current Filing Requirements." In this motion, plaintiff notes that his complaint contains an error. In particular, he says that his complaint alleges that

defendant's senior programs have an age 52 requirement when, in fact, the age requirement is 50. For reasons that are not clear at all, plaintiff complains that he cannot amend his complaint to make this change and add more defendants because defendant is not cooperating in discovery. (Plaintiff's discovery complaint is fleshed out in the third document he filed.)

The second document is titled "Plaintiff's Motion and Supporting Brief for an order requiring defendants [to] accept or defend against the attached Findings of Fact." In this document, plaintiff appears to be responding to defendant's answer to his complaint. In addition, he appears to be asking for an order directing the defendants to admit to five statements he makes on a page attached to the motion titled "Proposed finding of fact."

The third document is titled "Plaintiff's Motion and Supporting Brief for Sanctions as Provided for by Fed. R. Civ. P. 11 and 37." This document, too, appears to contain responses to statements made in defendant's answer. In addition, plaintiff appears to believe that defendants have ignored their obligations to make initial disclosures of information pertaining to the case as Fed. R. Civ. P. 26(a)(1) requires.

All three of plaintiff's submissions can be summed up as an attempt to obtain court orders forcing defendants to concede to plaintiff's claims of wrongdoing and to do it now, without further ado. But that is not how lawsuits are administered in this court or in any other court.

The pleadings simply set the stage. Plaintiff's complaint is intended to do no more

than provide notice to the defendant of what it is he contends defendant has done to violate his rights under federal law and what he wants the court to do about it. The answer is intended to put plaintiff on notice of the defendant's position with respect to plaintiff's allegations and to preserve various defenses the defendant may later assert in connection with a motion to dismiss or for summary judgment. If defendant files a motion to dismiss or for summary judgment, plaintiff will have an opportunity to respond to the motion. Otherwise, Fed. R. Civ. P. 7(a) forbids a plaintiff to submit a reply to an answer unless the court directs a reply to be filed. No such order has been entered in this case. Nevertheless, plaintiff is not prejudiced by Rule 7(a). Fed. R. Civ. P. 8(d) provides that averments in pleadings to which a response is not allowed are assumed to be denied. Therefore, the court assumes that plaintiff has denied the factual statements and affirmative defenses raised in the answer.

With respect to plaintiff's request for an order directing the defendants to admit to the "Proposed finding of fact" he attaches to his second motion, I draw plaintiff's attention to Fed. R. Civ. P. 33 and 36. Rule 36 describes the manner in which a party may ask the opposing party to admit or deny the truth of certain factual statements proposed by the party. Rule 36 describes the manner in which a party may ask questions of the opposing party relating to the facts of the case. In each instance, the rule provides that the party upon which the requests are served have thirty days in which to respond. If plaintiff follows these rules and is still not satisfied with defendant's responses, he may file a motion pursuant to

Fed. R. Civ. P. 37, as described in the magistrate judge's preliminary pretrial conference order.

Finally, plaintiff's third motion for sanctions against defendant for its failure to comply strictly with Fed. R. Civ. P. 26(a)(1) must be denied. In this court, cases in which one or more of the parties is proceeding pro se are exempt from the requirement of that rule and Fed. R. Civ. P. 26(f). A copy of this court's General Order identifying pro se cases as exempt from these rules is attached to this order. I note however, that defendant has no responsibility to determine whom plaintiff might wish to add as additional defendants in this case. If plaintiff believes that he has not sued the proper party or that he has a legal claim against individuals who have not yet been named in this lawsuit, it will be up to him to figure out what those legal claims might be, if any, and conduct discovery utilizing interrogatories or requests for production of documents to identify the persons responsible for the alleged violation of his rights.

#### ORDER

IT IS ORDERED that plaintiff's "Plaintiff's Motion and Supporting Brief to Stay Proceedings and Current Filing Requirements," "Plaintiff's Motion and Supporting Brief for an order requiring defendants [to] accept or defend against the attached Findings of Fact,"

and “Plaintiff’s Motion and Supporting Brief for Sanctions as Provided for by Fed. R. Civ.  
P. 11 and 37” are DENIED.

Entered this 20th day of April, 2007.

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