IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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RICHARD JOHN BAUER,

Plaintiff,

v.

JULEANN HORNYAK,
JANE DOE (Unknown), and
ROBERT THOMAS,

Defendants.

ORDER

07-C-055-C

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Plaintiff Richard Bauer has been proceeding pro se in this action. When he opened the case, he paid the $350 filing fee. On February 6, 2007, I advised plaintiff that it was his responsibility to serve the defendants with his complaint and asked him to provide proof of service no later than April 6, 2007. Later, on March 2, 2007, plaintiff asked that the court arrange with the United States Marshal to have his complaint served for him. At that time, he said that "it is impossible for me to send a waiver as per Supreme Court of Illinois letter from clerk Juleann Hornyak," and that "I also could not find any assistance from attorneys or friends." In an order dated March 12, 2007, I told plaintiff that because he was not proceeding in forma pauperis, I could not ask the marshal to serve his complaint. I sent him

a form for an affidavit of indigency and advised him that if he were to request leave to proceed in forma pauperis, I would screen his complaint pursuant to 28 U.S.C. § 1915(e)(2) and, if the complaint were to survive screening, I would arrange with the marshal for service of his complaint on the defendants. When it appeared that plaintiff had failed to respond to the March 12 order, I entered yet another order on April 12, 2007, giving plaintiff one last chance to submit proof of service of his complaint on the defendants or show cause for his failure to do so, or his case would be dismissed.

Now plaintiff has written the court to say that he did indeed respond to this court's March 12 order. He says that he mailed the court a completed form for an affidavit of indigency on March 15, 2007, and he attaches to his letter a copy of a postal return receipt reflecting that a "RAY" signed for it. This prompted the court to engage in a concentrated search for plaintiff's affidavit and discover that it had been routed inadvertently to the wrong office. The error appears to have occurred in large part because plaintiff did not put his case number on the affidavit. In any event, now that it is clear that plaintiff has asked for leave to proceed in forma pauperis and has supported his request with the required affidavit, I will rescind the order of April 12, 2007.

From the affidavit plaintiff has submitted, I conclude that he qualifies financially for pauper status. However, as I told plaintiff in the March 12 order, the in forma pauperis statute, 28 U.S.C. § 1915, requires judges to assess the legal merits of complaints filed by

persons seeking pauper status and to dismiss under § 1915(e)(2) any complaint that is legally meritless or seeks monetary relief from a defendant who is immune from such relief.

In his complaint, plaintiff sues Juleann Hornyak, the clerk of the Supreme Court for the State of Illinois, Illinois Supreme Court Chief Justice Robert Thomas and a Jane Doe he describes as Justice Thomas's secretary. He claims that in late June 2006, he mailed a letter to defendant Thomas at his court address. When he did not receive a response to the letter, he called defendant Thomas's office and was told by the secretary that his letter had been received and would be given "to the proper entity." Plaintiff heard nothing further until August 28, 2006, when he called defendant Thomas's office again. At that time, the secretary told plaintiff that she had sent his letter to security. Shortly thereafter, plaintiff received a letter from defendant JuLeann Hornyak, denying plaintiff "freedom of press, freedom of speech, equal protection of the law and due process of law." Plaintiff believes that defendant Hornyak conspired with Justice Thomas's secretary to "obstruct justice."

As for defendant Thomas, plaintiff states in his complaint that he does not believe that the Chief Justice knows anything about what defendants Doe and Hornyak did, and that he has named him as a defendant "for the truth to be known." According to plaintiff, if defendant Thomas did read his letter, then he "is obligated to inform the proper disciplinary board" and his failure to do so "would be nonfeasance which would give rise to being named in following lawsuits. . . ." In his request for relief, plaintiff asks that this court

investigate whether defendant Thomas saw the letter and, if so, require him to explain why he did not "do his duty according to Illinois Supreme Court Rule 63." Further, he asks that this court investigate "all cases of Richard J. Bauer and the one case of Joshua Richard Bauer."

There are many problems with plaintiff's complaint, two of which require its dismissal under § 1915(e)(2). First, plaintiff is seeking relief this court cannot give. Federal courts are not investigative bodies. They cannot engage in fact-finding missions on behalf of the litigants. Their role is limited entirely to receiving evidence from both sides to a dispute and applying the law necessary to resolve the dispute.

Second, while plaintiff may have a First Amendment right to freely speak his mind on matters of public concern, he does not allege facts from which an inference may be drawn that he was prevented from doing so. Rather, his complaint is that the defendant judge did not respond to his letter and that the defendant secretary turned it over to security. Plaintiff's free expression rights do not extend so far as to impose on others an obligation to give him a particular response or any response at all to his written communications, and they do not work to prohibit others from forwarding his communications to security if such action is deemed appropriate.

Plaintiff does not provide an explanation in his complaint why he believes defendant Hornyak's letter to him violated his First Amendment "free press" rights or his rights under

the Fourteenth Amendment due process and equal protection clauses, and I am unaware of any. Although Fed. R. Civ. P. 8 requires only that a plaintiff say enough to put the defendant on notice of his claim against her, the court need not invent factual scenarios that cannot be reasonably inferred from the complaint. In this instance, it is impossible to imagine how defendant Hornyak's letter to plaintiff could possibly cause a violation of his due process, equal protection or free press rights.

Because I am denying plaintiff's request for leave to proceed in forma pauperis and dismissing his complaint pursuant to 28 U.S.C. § 1915(e)(2), I need not address additional potential flaws in plaintiff's lawsuit, such as whether the judge he sues is entitled to immunity from suit, see Dawson v. Newman, 419 F.3d 656 (7th Cir. 2005) (explaining when judges are entitled to judicial immunity), and whether the case is subject to prompt dismissal on a motion to dismiss for improper venue.

ORDER

IT IS ORDERED that plaintiff's request for leave to proceed in forma pauperis is DENIED and this case is DISMISSED pursuant to 28 U.S.C. § 1915(e)(2) on the ground

that plaintiff's claims lack legal merit.

Entered this 30th day of April, 2007.

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