

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

JOSHUA G. BELK,

Petitioner,

ORDER

v.

07-C-301-C

FEDERAL BUREAU OF PRISONS,
UNITED STATES OF AMERICA,
RICARDO MARTINEZ, in his official capacity
as Warden, FPC Oxford, MICHAEL NALLEY,
in his official capacity as Regional Director,
Federal Bureau of Prisons, and HARLEY
LAPPIN, in his official capacity as Director,
Federal Bureau of Prisons,

Respondents.

Petitioner Joshua G. Belk, a prisoner at the Federal Prison Camp in Oxford, Wisconsin, has submitted 1) a 25-page document titled “Memorandum in Support of Motion for Preliminary Injunction”; a one-page document titled “Appendix to Plaintiff’s Proposed Statement of Facts in Support of his Motion for Preliminary Injunction;” 3) a five-page “Affidavit of Plaintiff Joshua G. Belk”; and 4) fourteen pages of exhibits. In addition, petitioner has submitted an application for in forma pauperis status, a certified copy of his trust fund account statement for a recent six-month period, and a “Certificate of Service”

indicating that he mailed a copy of all of these documents to Erik Peterson, the United States Attorney for the Western District of Wisconsin. There are several problems with petitioner's submissions.

First, although petitioner's filings have been assigned a case number, this court cannot consider whether he is entitled to a preliminary injunction unless he first files a civil complaint, complies with the filing requirements under the 1996 Prisoner Litigation Reform Act, obtains proper formal service of his complaint on the appropriate respondent and files a motion for preliminary injunction and supporting papers that comply with this court's "Procedure to be Followed on Motions for Injunctive Relief."

I cannot construe petitioner's present submissions as a proposed complaint because such a complaint would violate Fed. R. Civ. P. 8. This rule requires that a complaint 1) set forth a "short and plain statement of the grounds upon which the court's jurisdiction depends. . . .; 2) a short and plain statement of the claim showing that the pleader is entitled to relief; and 3) a demand for judgment for the relief the pleader seeks." Under Rule 8(e), "each averment of a pleading shall be simple, concise and direct." In other words, a complaint must be short and straightforward, that is, that it say no more than is necessary to put the respondents on notice of the petitioner's charges of wrongdoing against them and allow the respondents to file an answer. It should not include legal argument or evidentiary documents.

Moreover, because petitioner is a prisoner, he is subject to the 1996 Prison Litigation

Reform Act. This means that before he can proceed in a lawsuit in forma pauperis or have his complaint served on the respondents, he must pay a portion of the \$350 filing fee and allow the court to screen the merits of his complaint under 28 U.S.C. § 1915(e)(2). From petitioner's trust fund account statement, I conclude that he must pay an initial partial payment of the filing fee in the amount of \$46.74. He must pay the remainder of the fee in monthly installments even if his request for leave to proceed in forma pauperis is denied.

Finally, in this court, a litigant's request for a preliminary injunction must follow certain procedures, as explained in the document attached to this order. In particular, petitioner should note that in addition to filing a legal brief and evidentiary materials, he must submit a separate document titled "Proposed Findings of Fact." In this document, petitioner is to propose each fact necessary to a ruling in his favor. Each proposed fact is to be numbered and followed by a reference to evidence in the record that supports the fact. Because petitioner may not know what kinds of documents constitute evidence and how such evidence is to be referred to if it is used to support a proposed fact, I offer the following information. To support a proposed fact, petitioner might refer to:

- a. Depositions. Give the name of the witness, the date of the deposition, and page of the transcript of cited deposition testimony;
- b. Answers to Interrogatories. State the number of the interrogatory and the party answering it;
- c. Admissions made pursuant to Fed. R. Civ. P. 36. (state the number of

the requested admission and the identity of the parties to whom it was directed); or

- d. Other Admissions. The identity of the document, the number of the page, and paragraph of the document in which that admission is made.
- e. Affidavits. The page and paragraph number, the name of the affiant, and the date of the affidavit. (Affidavits must be made by persons who have first hand knowledge and must show that the person making the affidavit is in a position to testify about those facts.)
- f. Documentary evidence that is shown to be true and correct, either by an affidavit or by stipulation of the parties. (State exhibit number, page and paragraph.)

(Although it is too soon in this case for petitioner to have obtained depositions or answers to interrogatories or requests for admissions from the respondents, it is possible that he will wish to accumulate more evidence before refiling his motion for preliminary injunction.) Also, petitioner should look at footnote 2 of the Procedures to be Followed on Motions for Injunctive Relief, which states that the pleadings, such as the complaint and an answer, are not evidence.

If petitioner submits a proposed complaint, pays the initial partial payment he must pay under the Prison Litigation Reform Act and submits his motion for preliminary injunction and supporting materials to the court in proper form and in compliance with the

appropriate procedures, the court will screen his complaint. If the court grants petitioner's request for leave to proceed in forma pauperis, it will arrange for his complaint, motion and supporting papers to be served on the appropriate respondent or respondents. Petitioner is not to mail his submissions directly to the United States Attorney at this time.

ORDER

IT IS ORDERED that

1. Petitioner may have until June 18, 2007, in which to submit a proposed complaint that conforms to the requirements of Fed. R. Civ. P. 8, as explained above. If, by June 18, 2007, petitioner fails to file the required complaint or show cause for his failure to do so, this case will be dismissed without prejudice on the court's own motion.

2. Petitioner is assessed \$46.74 as an initial partial payment of the \$350 fee for filing this case. He is to submit a check or money order made payable to the clerk of court in the amount of \$46.74 on or before June 18, 2007. If, by June 18, petitioner fails to make the initial partial payment or show cause for his failure to do so, he will be held to have withdrawn this action voluntarily. In that event, the clerk of court is directed to close this file without prejudice to petitioner's filing his case at a later date.

3. Petitioner's request for a preliminary injunction is DENIED without prejudice because it is premature and because it has not been filed in compliance with this court's Procedure to be Followed on Motions for Injunctive Relief, a copy which is enclosed to

petitioner with a copy of this order.

Entered this 4th day of June, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge