

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

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ANDREW J. BIGBEE,

Plaintiff,

ORDER

v.

07-C-312-C

RALPH SADOWSKI, Investigative Supervisor;  
DANIEL WINGER, Correctional Officer,

Defendants.  
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Plaintiff Andrew Bigbee filed this action on June 11, 2007, when he paid the filing fee. Because plaintiff is no longer a prisoner, this case is not governed by the 1996 Prison Litigation Reform Act. Instead, plaintiff was free to serve his complaint on the defendants without first having his complaint screened under 28 U.S.C. § 1915A. In an order entered in this case on June 12, 2007, I directed plaintiff to submit proof of service of his complaint on the defendants no later than July 25, 2007. At that time, I supplied plaintiff with the necessary service forms and a memorandum setting forth the procedures for serving a complaint on individual federal officers in a federal lawsuit. Instead of acting promptly, plaintiff waited almost one month, until July 9, 2007, to mail his complaint to defendants

Winger and Sadowski. In a letter postmarked August 2, 2007, he advised the court of this fact. That letter did not find its way to plaintiff's file until after August 6, 2007, on which date I entered an order directing plaintiff to show cause, no later than August 17, 2007, why his case should not be dismissed for lack of prosecution. At that time, I noted that plaintiff had failed to submit proof of service of his complaint on the defendants or explained his inability to do so. Now plaintiff has filed a document titled, "Plaintiff's Response to Order."

In his response, plaintiff points out that he wrote to the court "on or about July 25, 2007," to advise of his July 9 attempt to seek a waiver of service of summons on the individual defendants. He notes that if he has not received signed waiver forms by August 14, he will attempt to effect personal service of process on the defendants. In this regard, he asks the court to provide explicit directions on how to accomplish such service, in light of the fact that he is "lacking funds to hire a Wisconsin process server" to complete this task.

As an initial matter, I note that even in the absence of waiver forms from the individual defendants, plaintiff has not submitted proof that he served the United States with a copy of his complaint, as the procedures sent to him with the June 12 order directed. Proof of service on the United States is shown by plaintiff's submission of a copy of the certified or registered mail receipt he received from the United States Postal Service at the time he mailed his complaint to the Attorney General of the United States in Washington,

D.C. and the United States Attorney for the Western District of Wisconsin. Plaintiff's failure to submit proof of any kind that he has served his complaint on the United States Attorney General and the United States Attorney for the Western District of Wisconsin is a major oversight that must be cured immediately or this case will be dismissed for plaintiff's failure to prosecute it diligently.

Moreover, the memorandum sent to plaintiff with the June 12 order explained exactly what plaintiff would have to do if one or more of the individual defendants failed to return a waiver form within a reasonable time, which is at least 30 days from the date on which plaintiff mailed the service packet to the defendant. In particular, it requires plaintiff or "someone over the age of 18 years of age who is not a party to the lawsuit" to serve the defendants personally with a summons and his complaint. There is no requirement that plaintiff hire a process server. Two summons forms are enclosed to plaintiff with this order, as is another copy of the court's "Procedures for Serving a Complaint on Individual Federal Officers in a Federal Lawsuit."

Plaintiff's lack of diligence in proceeding quickly to serve his complaint on the defendants will not be indulged further. A plaintiff has 120 days after filing his complaint in which to complete service of process. Fed. R. Civ. P. 4(m). Seventy of those days have already passed. October 9, 2007 is the outside deadline. If plaintiff does not take action at once to complete service of process on the United States and obtain personal service of

process on the individual defendants, I will dismiss this case without prejudice to plaintiff's refiling it at some future time when he is prepared to prosecute it diligently.

ORDER

IT IS ORDERED that plaintiff may have until August 30, 2007, in which to submit copies of certified or registered mail receipts showing that he has mailed a copy of his complaint to the Attorney General in Washington, D.C. and the United States Attorney for the Western District of Wisconsin.

FURTHER, IT IS ORDERED that plaintiff may have until no later than October 9, 2007, in which to provide proof of service of his complaint on the individual defendants. If, by October 9, 2007, plaintiff fails to submit such proof, the clerk of court is directed to enter judgment dismissing the case, without prejudice, for plaintiff's failure to prosecute.

Entered this 20th day of August, 2007.

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