IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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PIERRE DEPREE HUSBAND,

ORDER

Petitioner,

07-C-391-C

v.

ANN TURNER, Madison Police Dept. Detective; and
DOROTHY DOHEY, Madison Police Dept. Detective,

Respondents.

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In an order dated August 21, 2007, I granted plaintiff Pierre Depree Husband leave to proceed in forma pauperis in this action on his claim that defendants Turner and Dohey deprived him of his Fifth Amendment right against self-incrimination by failing to advise him of his Miranda rights. Before defendants answered the complaint, plaintiff filed a document titled "addendum to complaint," which I construed as a motion to amend his complaint to add claims under the Fourteenth Amendment's due process and equal protection clauses and to assert embarrassment as an emotional injury. I denied plaintiff's motion in an order dated September 11, 2007. In that order, I noted that plaintiff's motion was not accompanied by a proposed amended complaint that would replace the original

complaint, as this court's procedures require. In addition, I advised plaintiff that even if he had submitted a proposed amended complaint, I could not grant his motion to amend because his amendment was futile with respect to his due process and equal protection claims and unnecessary with respect to his specification that part of the injury for which he seeks damages is embarrassment or emotional harm. Now, defendants have answered plaintiff's complaint, and plaintiff has filed yet another document titled "Supplemental to Complaint" [sic]. Because plaintiff's proposed "supplement" does nothing more than respond to an affirmative defense raised in defendants' answer, I am construing the document as a reply to defendants' answer and disregarding it.

In their answer, defendants state that to the extent that plaintiff's complaint may contain claims based on grounds other than 42 U.S.C. § 1983, his claims are barred because he failed to satisfy the requirements of Wis. Stat. § 893.80(1). In his supplement, plaintiff seeks permission to make "corrections" and include "additional material pursuant to [Wis. Stat.] § 893.80(3)" in the record.

Fed. R. Civ. P. 12(b) permits defendants to avoid litigation of a case if plaintiff's allegations of fact, even if accepted as true, would be insufficient to make out a legal claim against the defendants. Although defendants have raised certain affirmative defenses in their answer they have not filed a motion to dismiss. If such a motion were to be filed, plaintiff would be allowed to respond to it. Otherwise, it is not necessary for plaintiff to respond to

defendants' answer. Indeed, 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 made in this case. Plaintiff should be aware, however, that he is not prejudiced by Rule 7(a). Fed. R. Civ. P. 8(d) provides averments in pleadings to which a response is not allowed are assumed to be denied. Therefore, although plaintiff is not permitted to respond to defendants' answer, the court assumes that he has denied the factual statements and affirmative defenses raised in that answer.

ORDER

IT IS ORDERED that plaintiff's "supplemental to complaint" is construed as an undirected reply to defendants' answer, which shall be disregarded.

Entered this 24th day of September, 2007.

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