

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

DAVID CZAPIEWSKI,

Plaintiff,

v.

BYRAN BARTOW, AMY FREEMAN and
SARAH DONOVAN,

Defendants.

ORDER

07-cv-549-bbc

In an order entered in this case on February 13, 2008, I screened plaintiff David Czapiewski's complaint as I am required to do under the Prison Litigation Reform Act. I concluded that plaintiff could proceed in forma pauperis on his claims that defendants Amy Freeman and Sara Donovan violated his First Amendment right to free speech by allegedly monitoring and recording his attorney phone call and defendant Byran Bartow violated his First Amendment right to free speech by failing to train defendants Freeman and Donovan. In the same order, I dismissed plaintiff's claim that defendants Michael Thurmer, Michael Meisner, Don Strahota and Kathryn Anderson violated his right of access to courts by

prohibiting him from receiving legal assistance from inmate Robert Ciarpaglini.¹ Service of plaintiff's complaint on defendants Freeman, Donovan and Bartow has been completed pursuant to this court's informal service agreement with the Attorney General and an answer is expected within a short time.

Now, however, plaintiff has filed a motion for leave to file an amended complaint. Plaintiff's motion will be denied for two reasons. First, plaintiff's motion to amend is not accompanied by a proposed amended complaint. Instead, plaintiff simply describes in his motion the various changes he would like to make to his complaint. Because the defendants in a lawsuit are required to file an answer to an amended pleading as well as to the original complaint, a proposed amended complaint must follow the same format as the original complaint. Plaintiff must name in the caption each person he wants to sue and describe in the body of the complaint what each defendant did or did not do, when they did or did not do it, and what he wants the court to do about it. It must be clear to defendants and to the court what plaintiff is saying each defendant did so that each can answer plaintiff's particular grievance against him or her.

Moreover, to help the court and defendants understand what changes a plaintiff is making in an amended complaint, it is this court's policy to ask the plaintiff to file a proposed amended complaint that looks just like the original except that plaintiff is to point

¹In an order dated December 26, 2007, I dismissed Robert Ciarpaglini from this case.

out any new defendants by highlighting their names in the caption and he is to highlight all the new or modified allegations he has made to the body of the complaint or to his request for relief. If plaintiff wants to delete certain allegations from the original complaint, he should draw a line through those allegations in his proposed amended complaint. If plaintiff does these things, it will allow the court to screen plaintiff's changes quickly and rule more promptly on his motion.

Second, even if plaintiff had submitted a proposed amended complaint in the format discussed above, I would not grant his motion at this time. As his reasons for requesting permission to amend his complaint, plaintiff says that he believes he should have stated additional claims in his complaint but that, under the direction of inmate Ciarpaglini, he was misled into filing a pleading containing an insufficient number of claims. Because plaintiff has not submitted a proposed amended complaint I cannot determine what additional claims he believes need to be added. However, plaintiff should be aware that when I screened his complaint, I read the allegations of the complaint generously as required by Haines v. Kerner, 404 U.S. 519, 521 (1972). It is the court's job in screening complaints filed by persons proceeding pro se to determine whether relief is possible under any set of facts that could be established consistent with the allegations. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). It is difficult to imagine how plaintiff might rewrite his complaint to "state more claims out of [his] first set of facts." Regardless of plaintiff's intentions, I cannot grant his motion at this time without first being able to review his proposed amendments. Therefore,

plaintiff's motion for leave to amend his complaint will be denied.

ORDER

IT IS ORDERED that plaintiff David Czapiewski's motion for leave to file an amended complaint (dkt. #20) is DENIED.

Entered this 21st day of April, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge