

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

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FRANKLIN C. EDMONDS,

Plaintiff,

v.

OPERATING ENGINEERS LO. 139,

Defendant.

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ORDER

08-cv-567-bbc

This is a civil action for monetary relief in which plaintiff Franklin Edmonds, who is proceeding pro se, alleges that he has been discriminated against by defendant Operating Engineers Lo. 139. Plaintiff has paid the \$350 fee for filing this case. In addition, plaintiff has submitted a document titled "Motion," (dkt. #3) in which he asks the court to appoint counsel to represent him and for my recusal from this case.

Pursuant to 28 U.S.C. § 1915(e)(1), the court may request an attorney to represent any person unable to afford counsel. Plaintiff is not proceeding in forma pauperis in this action and his motion is not accompanied by an affidavit of indigency from which a finding could be made that he qualifies financially for appointed counsel. Therefore, his motion for appointment of counsel will be denied.

Plaintiff's motion seeking my recusal in this case will be denied also. Section 144

requires a federal judge to recuse herself for “personal bias or prejudice.” Such a motion is required to be supported by an affidavit stating “the facts and reasons for the belief that bias or prejudice exists.” The factual statements of the affidavit must support an assertion of actual bias. United States v. Balistreri, 779 F.2d 1191, 1199 (7th Cir. 1985). They must be definite as to times, places, persons and circumstances. Id. Judicial rulings alone almost never constitute a valid basis for a bias or partiality motion. Liteky v. United States, 510 U.S. 540, 555 (1994). Plaintiff has not supported his motion with an affidavit explaining his reasons for requesting my recusal. Because he provides no reason or compelling argument why I would anything but fair and impartial in this case, I will deny his request.

The next step is for plaintiff to serve his complaint on the defendant. Under Fed. R. Civ. P. 4(m), a plaintiff has 120 days after filing a complaint in which to serve the defendant. However, that is an outside limit with few exceptions. This court requires that a plaintiff act diligently in moving his case to resolution. If plaintiff acts promptly, he should be able to serve his complaint on the defendant well before the deadline for doing so established in Rule 4. To help plaintiff understand the procedure for serving his complaint, I am enclosing with this order a copy of a document titled “Procedure for Serving a Complaint on a Corporation, Partnership or Unincorporated Association in a Federal Lawsuit.” In addition, I am enclosing to plaintiff an extra copy of his complaint and forms he will need to send to the defendant in accordance with the procedures set out in Option 1 of the memorandum.

ORDER

IT IS ORDERED that plaintiff's motions for appointment of counsel and for my recusal in this case (dkt. #3) are DENIED.

Further, IT IS ORDERED, that plaintiff promptly serve his complaint on the defendant and file proof of service of his complaint as soon as service has been accomplished. If, by December 3, 2008, plaintiff fails to submit proof of service of his complaint on the defendant or explain his inability to do so, I will direct plaintiff to show cause why his case should not be dismissed for lack of prosecution.

Entered this 3d day of October, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge