

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

DAVID J. CLARK,¹

Petitioner,

v.

ORDER

08-cv-536-bbc

STATE OF WISCONSIN DEPARTMENT
OF HEALTH SERVICES, DIVISION OF
LONG TERM CARE, CLIENTS RIGHTS
OFFICE, DIVISION OF MENTAL HEALTH
AND SUBSTANCE ABUSE SERVICES,
WISCONSIN RESOURCE CENTER, KAREN
LEITNER, MIKE CARROLL, RANDI RAHMER,
THOMAS SPEECH, BOB KRIZ, NANCY SEEFELDT,
ERICA SCHEDEL, JAMES CHASE, JENNIFER
BLINDAUER, DANA KREUGER, STEVEN M.
HAMILTON, DAN WINKLER, LEON LIPP,
TODD MOXHAM, DANIEL MINNICK, NIKKI
SUESS, ABBAS ANGHA, KENRIC KLEMZ,
STEVE J. HABLE, MISSY SAUBY, MARLA
BOBHOLZ-DAVIS, JENNIFER DEGROOT,
VICKIE WEBER, CHEMA PABA, KATHY SABEL,
CHAD, DAWN OLK, BYRAN BARTOW, DERIC
MAGNUSSEN, DARRELL FRANKLIN, MATT
DAVEL, DIANE FERGOT, CHRISTI BERMEJO,

¹Petitioner failed to include his last name and the last name of respondents in his caption. However, he did include all relevant last names in the “Parties” section of his complaint. Therefore, I have modified the caption to include the parties’ last names so that all parties are properly named in accordance with Fed. R. Civ. P. 10(a).

JOHN EASTERDAY, JIM YEADON, MARIE
NESEMANN, KAREN TIMBERLAKE, KEVIN
HAYDEN, COUNSEL and STEVE WATTERS,

Respondents.

- - - - -

This is a proposed civil action for injunctive and monetary relief, brought under 42 U.S.C. § 1983. Petitioner David Clark is civilly committed under Wis. Stat. ch. 980 and detained at the Wisconsin Resource Center in Winnebago, Wisconsin. Petitioner asks for leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. From the financial affidavit petitioner has given the court, I conclude that petitioner is unable to prepay the full fee for filing this lawsuit. Petitioner pre-paid \$23.15 as required by this court's September 24, 2008 order, dkt. #5. Because he is a patient and not a prisoner, petitioner is not subject to the 1996 Prison Litigation Reform Act.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, when a litigant is requesting leave to proceed in forma pauperis, the court must deny leave to proceed if the action is frivolous or malicious, fails to state a claim on which relief may be granted or seeks money damages from a respondent who is immune from such relief. 28 U.S.C. § 1915(e). I conclude that petitioner's request for leave to proceed in forma pauperis must be denied and this complaint dismissed without prejudice because the complaint violates Fed. R. Civ.

P. 8 and possibly Fed. R. Civ. P. 20.

Fed. R. Civ. P. 8. requires that a complaint 1) set forth a “short and plain statement of the grounds for the court’s jurisdiction . . .; 2) a short and plain statement of the claim showing that the pleader is entitled to relief; and 3) a demand for the relief sought” Pursuant to Rule 8(d), “each allegation must be simple, concise, and direct.” “The primary purpose of [Rule 8] is rooted in fair notice: a complaint ‘must be presented with intelligibility sufficient for a court or opposing party to understand whether a valid claim is alleged and if so what it is.’” Vicom, Inc. v. Harbridge Merchant Servs., Inc., 20 F.3d 771, 775 (7th Cir. 1994) (citation omitted) (119-page, 385-paragraph complaint “violated the letter and spirit of Rule 8(a)”).

Fed. R. Civ. P. 20(a) governs the number of parties a plaintiff may join in any one action. It provides that a plaintiff may sue more than one defendant when his injuries arise out of “the same transaction, occurrence, or series of transactions or occurrences” and when there is “any question of law or fact common to all defendants.” Thus, multiple defendants may not be joined in a single action unless the plaintiff asserts at least one claim against each of them that arises out of the same transaction or occurrence or series of transactions or occurrences and presents questions of law or fact common to all. Rule 20(a) prevents plaintiffs from filing a “buckshot complaint.” George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007). For example, if a plaintiff filed “a suit complaining that A defrauded the plaintiff,

B defamed him, C punched him, D failed to pay a debt, and E infringed his copyright, all in different transactions,” the complaint would be rejected because the defendants would not be properly joined under Rule 20(a)(2). Id.

Petitioner’s complaint exceeds twenty typed pages and contains various allegations against 45 different respondents. Although the length of the complaint and the number of respondents do not automatically render it incomprehensible, those factors do raise questions about petitioner’s compliance with Fed. R. Civ. P. 8 and 20. Although petitioner has attempted to provide some intelligibility by numbering the paragraphs in his complaint, numbering the paragraphs does not change their substance, or lack thereof.

Many of petitioner’s allegations concern his “resolve[] to more fervently observe and practice his faith.” Although I understand petitioner to be alleging some claim related to the exercise and expression of his religious beliefs, his factual allegations regarding the religious exercise and alleged mistreatment are vague at best. Instead of alleging facts, petitioner provides legal allegations and conclusions of law, such as “Kenric . . . cited David for his religious exercise” and “Steven MH, Steve JH and or Vickie . . . displayed and documented unequal treatment.” Whether a respondent discriminated against petitioner and whether petitioner was engaged in a constitutionally protected religious exercise are questions of law. Without knowing what petitioner’s religious exercise is, neither respondents nor the court can determine whether petitioner has alleged a valid claim under either the First Amendment

or the Religious Land Use and Institutionalized Persons Act.

Petitioner's complaint provides a litany of irrelevant information about his day to day experience at the Wisconsin Resource Center. The inclusion of so much irrelevant information makes it difficult to discover which of petitioner's constitutional or federal rights have been violated, if any. Petitioner should simply state (1) what acts he believes violated his rights; (2) who committed those acts; and (3) what relief he wants the court to provide.

Further, petitioner alleges that some respondents have not been enforcing all institutional rules and that the Wisconsin Resource Center's grievance resolution process is inadequate. Although it is difficult to be certain, these additional allegations appear unrelated to any religious exercise claims petitioner may have. If in fact these additional allegations do not arise out of the same transaction or occurrence as petitioner's religious exercise claim, then including such unrelated allegations against a separate group of respondents would violate Rule 20(a). Therefore, petitioner should be aware that some of the allegations and respondents in his initial complaint may have to be removed from any amended complaint to avoid violating Rule 20(a).

Because petitioner's complaint does not comply with Rule 8 and possibly violates Rule 20 as well, I must dismiss it without prejudice. Petitioner is free to file an amended complaint in which he sets out his claims against each of the respondents in short and plain

statements made in numbered paragraphs. To be clear, I am not asking petitioner for more details, but a more concise, short and plain statement of relevant facts, as discussed above. Petitioner should not include legal conclusions and legal phrases in his factual allegations. Finally, petitioner should use full names or last names as opposed to first names when discussing respondents in the body of his complaint to avoid confusion.

If petitioner submits a complaint that complies with Rule 8 by November 12, 2008, I will enter an order on his motion for leave to proceed in forma pauperis. However, if he fails to submit a complaint that complies with Rule 8 by that date, I will dismiss this case on the court's own motion.

ORDER

IT IS ORDERED that petitioner's complaint is DISMISSED for his failure to comply with Fed. R. Civ. P. 8, and possibly Fed. R. Civ. P. 20. Petitioner may have until November 12, 2008 in which to submit a proposed complaint that conforms to the requirements of Fed. R. Civ. P. 8 and 20, as explained above. If, by November 12, 2008, petitioner fails to file the required amended complaint or show cause for his failure to do so, then this case will be dismissed without prejudice on the court's own motion.

Entered this 29th day of October, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge