

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

DARYL STRENKE,

Plaintiff,

v.

JOHN H. FEINER and
ROBERT ALAN GLICKMAN,

Defendants.

ORDER

09-cv-473-slc¹

This case has been pending since July 28, 2009, when plaintiff filed the complaint and paid the \$350 filing fee. Since that time, plaintiff has been attempting to serve the defendants, with much difficulty and delay. In five of the court's previous orders, plaintiff was granted extensions of his deadline to file proof of service of the complaint. Dkts. ##9, 18, 22, 28 & 36. Of the four original defendants named in the complaint, plaintiff has voluntarily dismissed two (defendants Lerner and Crime Attorneys), successfully served one (defendant Glickman) and has yet to serve another (defendant Feiner). Presently, plaintiff is approximately 230 days beyond the 120-deadline to serve as set forth in Fed. R. Civ. P. 4(m). This is delay uncharacteristic of a case filed in this court.

Now, plaintiff has submitted another motion for an extension of time in which to file proof of service. Dkt. #39. In his motion, plaintiff explains that he mailed the summons and complaint and a check for service fees to the Orange County Sheriff's Department for

¹ For the purpose of issuing this order, I am assuming jurisdiction over the case.

service on defendant Feiner. However, in a subsequent letter to the court dated July 8, 2010, plaintiff explains that the Orange County Sheriff's Department made multiple service attempts on defendant Feiner and that those efforts failed. Although it is unfortunate that plaintiff has been unable to effect service of his complaint on defendant Feiner despite his best efforts, the court can accept no further delay in this case. This court has no authority to direct state process servers to exceed their established procedures for serving process and plaintiff is not entitled to have service made by the United States Marshal because he is not proceeding in forma pauperis. Therefore, I have no choice but to dismiss defendant Feiner from this lawsuit without prejudice to plaintiff's filing a new lawsuit against him at another time.

Going forward, plaintiff's case will proceed against defendant Glickman. Because defendant Glickman has filed an answer to the complaint, the next step in this case will be for the parties to participate in a preliminary pretrial conference with the magistrate judge. At the conference, the magistrate judge will schedule deadlines and a trial date that will assist in bringing this case to resolution.

ORDER

IT IS ORDERED that

1. Plaintiff Daryl Strenke's motion for an extension of time to serve defendant Feiner, dkt. #39, is DENIED; and

2. Defendant Feiner is DISMISSED from this lawsuit without prejudice to plaintiff's filing his claim against him at some future time.

Further, IT IS ORDERED that the clerk of court is requested to set this case for a preliminary pretrial conference before United States Magistrate Judge Stephen Crocker as promptly as possible.

Entered this 14th day of July, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge