

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

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ROBERT HARRY KUNFERMAN,

Plaintiff,

v.

BOARD OF REGENTS OF UNIVERSITY OF  
WISCONSIN SYSTEM; UW-EAU CLAIRE;  
UW-MADISON; X-Chancellor JOHN WILEY;  
Chancellor CAROLINE MARTIN; ERVIN H. COX  
(A.K.A. ERWIN COX or KIPP COX); KENNETH  
KERL; KEVIN J. HELMKAMP; NANCY K. LYNCH;  
ROBERT O. RAY; SUZANNE JONES;  
REBECCA DUFFY; LORI BERQUAM;  
DANIELLE WARTHEN; CHERYL RADZINSKI;  
MOLLY JAHN; JOANNE E. BERG;  
BRENT GRUBER; CRISTI VAUGHN;  
JODI THEISING RITTER; TERESA E. O'HALLORAN;  
DAVID BACKSTROM; DAVID SPRICK;  
UWEC X-Dean ROBERT SHAW;  
Police Officer DANIEL SWANSON;  
KARLA A. WEBER; ERNESTO R. MONGE;  
DAN BARNISH; MARTIN NYSTRAND;  
TERI PARKS; Vice Chancellor Chief SUSAN RISELING;  
DEBRA LAUDER; CYNTHIA B. HASZ;  
CHRISTINE STEPHENSON; TALLY MOSES;  
SUSAN FISCHER; RICHARD DELUGE and  
STEPHEN APPELL,

Defendants.

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OPINION and ORDER

09-cv-662-bbc

In this case, Judge Crabb dismissed plaintiff's complaint and plaintiff's first amended complaint, both for failure to comply with Rule 8 of the Federal Rules of Civil Procedure. In her most recent order, she told plaintiff he would have one more opportunity to file an amended complaint, and "should replace his vague and conclusory language with factual allegations" to overcome his Rule 8 problems. The deadline for filing the second amended complaint is July 6, 2010. Now before the court is plaintiff's motion for an extension of time, in which he asks for

an enlargement of ten days to allow him time to finish drafting his complaint. Because the delay does not seem prejudicial at this early stage, I am granting his motion.

I pause to make two points. In plaintiff's motion, he mentions that he has been struggling to fit his facts within eight double-spaced pages. That arbitrary constraint appears to be of his own making; nowhere in Judge Crabb's order does she so limit him. Instead, she states only that he should avoid making vague and conclusory statements and strive to keep his complaint "short and plain." Although plaintiff's attempts at self-discipline are admirable, plaintiff would be wise to focus on Judge Crabb's instructions rather than creating his own set of rules. Plaintiff's focus on trimming down his 50+ page complaint, single-spaced to a slim 8 pages, double-spaced, could distract plaintiff from the important goal of leaving in all the key information and taking out all the excess.

Next, plaintiff suggests that he is having difficulty avoiding vague and conclusory statements because some of the documents he wishes to use to support his case lack "signatures, dates or other customary items" or have been "omitted." To the extent plaintiff is saying that he does not *know* who performed certain bad acts (who signed or "omitted" certain documents), there are a number of possible solutions: (1) he may identify who he *thinks* did it and describe the factual basis for thinking that (i.e., no signature, but I know that so-and-so regularly prepares those sorts of documents); or (2) if he knows *someone* did it but does not know *who*, he may describe that individual as "John" or "Jane Doe" (if there are more than one, they should be numbered: John Doe #1 did X; John Doe #2 did Y) and name a John or Jane Doe in the caption.

What would not be acceptable, however, is for plaintiff to simply “speculate,” or guess, that “so-and-so must have prepared or omitted” a given document, which relates to why he must take out vague and conclusory allegations. Rule 8 does not require solid proof at the pleading stage. However, under Rule 11 of the Federal Rules of Civil Procedure, plaintiff should not file any pleading with the court without first performing a reasonable inquiry and discovering facts that make it likely that, at a later stage in the case, plaintiff will be able to prove the allegations he makes in that pleading. Fed. R. Civ. P. 11(b). This means that plaintiff is not allowed to sue on mere suspicion, but instead should already have facts that give reason to believe his suspicions. In completing his amended complaint, plaintiff should avoid making any allegation or naming any defendant for which suspicion is plaintiff’s sole basis.

#### ORDER

IT IS ORDERED that plaintiff Robert Harry Kunferman’s motion for an extension of time, dkt. #37, is GRANTED. Plaintiff may have until July 16, 2010 to submit a proposed second amended complaint.

Entered this 30<sup>th</sup> day of June, 2010.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge