

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DEBORAH M. WILSON

v.

BARRY J. WILSON

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CIVIL ACTION
NO. 05-91

O'Neill, J.

January 12, 2005

MEMORANDUM

Plaintiff Deborah M. Wilson has filed a pro se civil complaint against defendant Barry J. Wilson alleging that he forged her name to I.R.S. income tax forms for the years 2000, 2001 and 2002. Plaintiff seeks leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. In her affidavit in support of her request to proceed in forma pauperis, plaintiff, who is unemployed, lists assets and income primarily consisting of a \$65,000 home and biweekly alimony payments of \$230. Plaintiff also receives bi-weekly child support payments of \$323 and \$98 worth of food stamps each month. Upon review of plaintiff's financial circumstances, I will deny leave to proceed in forma pauperis and will order plaintiff to pay a partial filing fee of \$75.00 to commence this action.

Upon consideration of plaintiff's complaint, the Court has determined that it fails to conform with the Federal Rules of Civil Procedure and may not proceed in its present form. Pursuant to Federal Rule of Civil Procedure 8(a), a complaint must include "a short and plain statement of the grounds upon which the court's jurisdiction depends" and "a demand for judgment for the relief the pleader seeks." Plaintiff's statement of claim fails adequately to

describe the jurisdictional basis for her claim and the form of relief that she is seeking, and defendant is therefore without fair notice to allow him to respond to plaintiff's claims. See Fed. R. Civ. P. 8(a).¹ Accordingly, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), plaintiff's complaint will be dismissed for failure to state a claim upon which relief may be granted without prejudice to her right to file a new complaint that meets these requirements.

¹The Federal Rules of Civil Procedure and the Local Rules of this Court must be complied with and followed. A copy of Rule 8 of the Federal Rules of Civil Procedure is attached.

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ORDER

AND NOW, this 12th day of January, 2005, it is ORDERED that:

1. plaintiff's motion to proceed in forma pauperis is DENIED without prejudice to plaintiff to renew her request and to advise the court of additional or changed circumstances.
2. Plaintiff is assessed a partial filing fee of \$75.00 to commence this action.
3. Plaintiff's complaint is DISMISSED without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). Plaintiff may file an amended complaint that meets the requirements of Federal Rule of Civil Procedure 8(a) within twenty business days from the date of this order.

s/Thomas N. O'Neill, Jr.

THOMAS N. O'NEILL, JR., J.

Plaintiff is encouraged to obtain counsel. The Philadelphia Bar Association and other county bar associations provide volunteer lawyer services for those who lack the ability to pay, as well as lawyer referral services for those in moderate financial circumstances. There are also

other volunteer lawyer organizations that specialize in certain areas. The Philadelphia Bar Association programs are listed below.

Philadelphia Bar Association
One Reading Center, 11th Floor
Philadelphia, PA, 19107

VIP – Free services for eligible clients: (215) 238-6300
Lawyer Referral and Information Service (215) 238-1701

Rule 8. General Rules of Pleading

(a) Claims for Relief.

A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

(b) Defenses; Form of Denials.

A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Rule 11.

(c) Affirmative Defenses.

In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of Failure To Deny.

Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading to be Concise and Direct; Consistency

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal, equitable, or maritime grounds. All statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of Pleadings

All pleadings shall be so construed as to do substantial justice.