

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

HUGH M. HARRISON.

Petitioner.

OPINION AND ORDER

08-cv-222-bbc

v.

STATE OF WISCONSIN, ST. CROIX COUNTY
CORPORATE COUNSEL,

Respondents.

Petitioner has filed a pleading in this court titled "Petition for Removal." He states that "this motion is brought on behalf of the defendant Hugh M. Harrison, and brought for the purpose of having these case(s) 99PA37 and 96FA95 brought for Federal Removal (U.S.C. Title 28; Sec. 1446), because of the unconstitutional violation of "Due Process Rights" of the defendant."

Pursuant to 28 U.S.C. §1446(c)(4), a district court is to examine a notice of removal and determine whether it appears from its face and any exhibits attached thereto that an order for summary remand must be issued. Having examined the petition for removal in this case, I conclude that petitioner's state court actions must be remanded forthwith to the

Circuit Court for St. Croix County, Wisconsin.

First, petitioner has not complied with the procedures set forth in 28 U.S.C. § 1446 for removing a case to federal court. Subsection (a) of this statute provides as follows:

A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

_____ (Emphasis added.)

_____ From the petition petitioner has submitted it is difficult to determine anything about the cases he is attempting to remove because the only information he has provided are the case numbers of the two St. Croix County circuit court cases. He has not submitted a copy of “all process, pleadings and orders” served upon him in these actions.

Second, subsection (b) of the statute requires that the notice of removal be filed within thirty days “after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based . . .” I can infer from the case numbers of the cases that petitioner is attempting to remove that they were filed in 1996 and 1999. Accordingly, I must conclude that a petition for removal of these cases is untimely.

In sum, because petitioner has not complied with the removal procedures provided

in 28 U.S.C. § 1446 and because in any event the time has passed within which removal may have been proper, his state court actions numbered 99PA37 and 96FA95 must be remanded to the Circuit Court for St. Croix County.

ORDER

IT IS ORDERED that case nos. 99PA37 and 96FA95 are REMANDED to the Circuit Court for St. Croix County, Wisconsin.

Entered this 22nd day of April, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge