

UNITED STATES DISTRICT COURT
for the
Eastern District of Wisconsin

DAVID P. WIELEPSKI

Plaintiff

v.

CITY OF WEST ALLIS, WISCONSIN; et al.,

Defendant

Civil Action No. 17 CV 01004

NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS

To: Clerk, City of West Allis, Wisconsin

(Name of the defendant or - if the defendant is a corporation, partnership, or association - an officer or agent authorized to receive service)

Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within 30 days (give at least 30 days, or at least 60 days if the defendant is outside any judicial district of the United States) from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date:

August 4, 2017

Signature of the attorney or unrepresented party

Attorney A. Steven Porter

Printed name

P.O. Box 7093
Madison, Wisconsin 53707

Address

asp@mailbag.com

E-mail address

(608) 662-2285

Telephone number

RECEIVED

AUG 08 2017

CITY OF WEST ALLIS
CITY CLERK

UNITED STATES DISTRICT COURT
for the
Eastern District of Wisconsin

DAVID P. WIELEPSKI
Plaintiff
v.
CITY OF WEST ALLIS, WISCONSIN; et al.,
Defendant
Civil Action No. 17 CV 01004

WAIVER OF THE SERVICE OF SUMMONS

To:
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 08/04/2017, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date:

Clerk, City of West Allis, Wisconsin
Printed name of party waiving service of summons

Signature of the attorney or unrepresented party

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DAVID P. WIELEPSKI,

Plaintiff(s),

v.

Case No. 17 CV 1004

CITY OF WEST ALLIS, WISCONSIN, et al.

Defendant(s).

CONSENT TO PROCEED BEFORE A MAGISTRATE JUDGE

This form must be filed with the Clerk of Court within 21 days of receipt. Although choosing to have your case decided by a magistrate judge is optional and refusal will not have adverse substantive consequences, the timely return of this completed form is mandatory.

If you do not consent to a magistrate judge deciding your case, a district judge will handle your case. When a case is handled by a district judge, magistrate judges in this district generally play no further role in the case and do not issue reports and recommendations.

Magistrate judges do not conduct felony trials, and therefore felony trials do not interfere with scheduling and processing of cases before magistrate judges.

Check one:

The undersigned attorney of record or pro se litigant **consents** to have Magistrate Judge David E. Jones conduct all proceedings in this case, including a bench or jury trial, and enter final judgment in accordance with 28 U.S.C. § 636(c) and Federal Rule of Civil Procedure 73(b).

The undersigned attorney of record or pro se litigant **refuses** to have a magistrate judge enter final judgment in this matter. I understand that this means that a district judge alone will handle all further proceedings in this matter.

Signed this ____ day of _____, _____.
(date) (month) (year)

Signature of counsel of record or pro se litigant

- Plaintiff / petitioner (attorney or pro se litigant)
- Defendant / respondent (attorney or pro se litigant)
- Other party

ASSIGNMENT OF CIVIL CASES
EASTERN DISTRICT OF WISCONSIN

At the time a new civil action is filed, it is assigned by random selection to either a district judge or a magistrate judge in accordance with the local rules. Pursuant to the provisions of 28 U.S.C. §636(c) and Rule 73 of the Federal Rules of Civil Procedure, a United States Magistrate Judge may, with the consent of the parties, conduct all proceedings in this civil action, including a bench or jury trial and order the entry of judgment. The statute provides for direct appeal to the U.S. Court of Appeals for the Seventh Circuit.

Once the assigned district or magistrate judge has been selected, the local rules of this district require that each party to the action receive a copy of the "consent form." Each party shall complete the form and file it with the Clerk of Court **within 21 days** after its receipt.

If this case has been randomly assigned to a **district judge** and all parties consent to have the magistrate judge conduct all proceedings in the case, the district judge may enter an order transferring the case to the magistrate judge.

If this case has been randomly assigned to a **magistrate judge** and not all parties consent, then the case will be reassigned by random selection to a district judge. If all parties consent, the magistrate judge will conduct all proceedings in the action.

While the decision to consent or not to consent to the exercise of jurisdiction by the magistrate judge is entirely voluntary, the duty to respond to this order is **mandatory**. Your response shall be made to the Clerk of Court only on the form on the reverse side of this notice.

IT IS THEREFORE ORDERED, that you complete this form and file it with the Clerk of Court within **twenty-one (21) days** from receipt.

UNITED STATES DISTRICT COURT

s/William C. Griesbach
Honorable William C. Griesbach,
Chief Judge

UNITED STATES DISTRICT COURT
for the
Eastern District of Wisconsin

DAVID P. WIELEPSKI,

Plaintiff(s)

v.

CITY OF WEST ALLIS, WISCONSIN; STEVEN R.
KUHNMEUNCH, and CLINT CORWIN,

Defendant(s)

Civil Action No. 17-cv-1004

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)
City of West Allis, Wisconsin
c/o City Clerk
7525 W. Greenfield Avenue
West Allis, Wisconsin 53214

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you receive it) – or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) – you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or the plaintiff's attorney, whose name and address are:

Attorney A. Steven Porter
P.O. Box 7093
Madison, Wisconsin 53707
asp@mailbag.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 07/21/2017

STEPHEN C. L...

s/K. Hubacz

Signature of Clerk or Deputy Clerk



Civil Action No. 17-cv-1004

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4(l))

This summons and the attached complaint for *(name of individual and title, if any):*
City of West Allis, Wisconsin

were received by me on *(date)* _____.

I personally served the summons and the attached complaint on the individual at *(place):*

on *(date)* _____ ; or

I left the summons and the attached complaint at the individual's residence or usual place of abode with *(name)*

_____, a person of suitable age and discretion who resides there,

on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons and the attached complaint on *(name of individual)* _____

who is designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

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

DAVID P. WIELEPSKI, *

Plaintiff, *

-vs- *

Case No. 17 CV 01004

CITY OF WEST ALLIS, WISCONSIN, *

a municipal corporation; STEVEN R. *

KUHNMUENCH, in his individual capacity; *

CLINT CORWIN, in his individual capacity; and *

UNKNOWN UNNAMED EMPLOYEES OF *

THE CITY OF WEST ALLIS, WISCONSIN, in *

their individual capacities, *

Defendants. *

COMPLAINT

Plaintiff, David P. Wielepski, by his attorneys, A. Steven Porter and Kasieta Legal Group, LLC, by Robert J. Kasieta, for and as his Complaint against the defendants above-named, alleges, states and show the Court as follows:

JURISDICTION AND VENUE

1. This is an action, pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201 and 2202, for legal, equitable and declaratory relief to secure protection and redress deprivations, under color of State law, of rights secured by the Fourth, and Fourteenth Amendments to the United States Constitution and the laws of the United States. Jurisdiction is vested in this Court pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) and (4).

2. Defendants reside and have their principal places of business in the Eastern District of Wisconsin, and the unlawful acts alleged herein were committed in the Eastern District of Wisconsin.

3. Venue is vested in this Court pursuant to 28 U.S.C. § 1391(b).

PARTIES

4. David P. Wielepski is an adult individual who resides at 1462 S. 97th Street, West Allis, Milwaukee County, Wisconsin 53214, in the Eastern District of Wisconsin.

5. Defendant City of West Allis, Wisconsin, is a municipal corporation duly constituted under the Laws of the State of Wisconsin with its principal place of business located at 7525 W. Greenfield Avenue, West Allis, Milwaukee County, Wisconsin 53214, in the Eastern District of Wisconsin.

6. Defendant Steven R. Kuhnmuench is an adult individual who, on information and belief, resides in the City of West Allis, Milwaukee County, Wisconsin 53214, in the Eastern District of Wisconsin. At all times pertinent and material to this Complaint, defendant Kuhnmuench acted in the course and scope of his employment as a police officer with the City of West Allis Police Department. Defendant Kuhnmuench is named in his individual capacity.

7. Defendant Clint Corwin is an adult individual who, on information and belief, resides in the City of West Allis, Milwaukee County, Wisconsin 53214, in the Eastern District of Wisconsin. At all times pertinent and material to this Complaint, defendant Corwin acted in the course and scope of his employment as a police sergeant with the City of West Allis Police Department. Defendant Corwin is named in his individual capacity.

8. Defendants Unknown, Unnamed Employees of the City of West Allis, Wisconsin are adult individuals who, on information and belief, resides in the City of West Allis, Milwaukee County, Wisconsin 53214, in the Eastern District of Wisconsin. At all times pertinent and material to this Complaint, said defendants acted in the course and scope of his employment as employees with the City of West Allis Police Department. Defendants Unknown, Unnamed Employees of the City of West Allis, Wisconsin, are sued in their individual capacities.

9. At all times pertinent and material to this Complaint, defendants Kuhnmuench and Corwin acted in the course and scope of their employment as police officers. The actions of all Defendants as alleged herein were taken under color of the statutes, ordinances, regulations, customs and usages of the State of Wisconsin, and according to the policies or customs of the City of West Allis.

ALLEGATIONS OF FACT

10. In the early morning hours on July 23, 2011, plaintiff David P. Wielepski was a passenger in a vehicle owned and operated by his friend, Isac A. Garcia. Mr. Wielepski and Mr. Garcia were returning from an evening celebrating Mr. Wielepski's birthday at the Oneida Casino.

11. Mr. Wielepski had twenty-eight hundred dollars (\$2,800.00) in cash in his trouser pocket in winnings from playing the slot machines at the casino that night.

12. Mr. Garcia's vehicle, with Mr. Wielepski in it, caught the attention of defendant Clint Corwin, who was on duty driving a squad car as a police sergeant with the City of West Allis Police Department. Sergeant Corwin turned his squad car around and began to pursue Mr. Garcia's vehicle.

13. Mr. Garcia eventually stopped his vehicle at the end of a dead-end alley in the City of West Allis. Sergeant Corwin stopped his squad car immediately behind Mr. Garcia's vehicle, blocking any opportunity for Mr. Garcia to drive his vehicle out of the alley.

14. Sergeant Corwin exited and came around the front of his squad car behind Mr. Garcia's vehicle with his gun drawn and pointed at Mr. Garcia's vehicle.

15. Mr. Garcia attempted to get out of his vehicle on the driver's side, but got back in upon orders from Sergeant Corwin to stay in the vehicle.

16. A short time afterward, Mr. Wielepski got out and stood up facing the rear of Mr. Garcia's vehicle on the passenger side. Mr. Wielepski had his hands up to signify he was unarmed and surrendering. Sergeant Corwin moved to the rear of Mr. Garcia's vehicle on the passenger side with his gun drawn and his arms extended in a shooting stance.

17. Just then, defendant Steven R. Kuhnmuensch walked up behind Mr. Garcia's vehicle. Sergeant Corwin holstered his firearm and pulled out his electronic control device or "taser," aimed it at Mr. Wielepski, who was still standing with his hands up, and fired the taser at Mr. Wielepski, hitting him in the chest. Sergeant Corwin then grabbed Mr. Wielepski by the front of his shirt and pulled him forward. Off-balance, Mr. Wielepski awkwardly stumbled forward into Sergeant Corwin and spun around, contacting Officer Kuhnmuensch, and fell to the alley pavement.

18. As Mr. Wielepski was spinning and falling, Sergeant Corwin tased him two more times and Officer Kuhnmuensch struck him several times with his flashlight. While Mr. Wielepski lay face-down on the pavement, Officer Kuhnmuensch kicked him in the side. Officer Kuhnmuensch and Sergeant Corwin pulled Mr. Wielepski's arms behind his back and handcuffed

him. Either Sergeant Corwin or Officer Kuhnmuench then struck Mr. Wielepski on the back of his head, driving his face into the pavement, causing pain and injury to Mr. Wielepski and knocking him unconscious.

19. At no time did Mr. Wielepski offer resistance or engage combatively with anyone. At no time did Mr. Wielepski present a threat of injury or harm to anyone.

20. The amount of force used against Mr. Wielepski by Officer Kuhnmuench and Sergeant Corwin was unreasonable and excessive under the circumstances.

21. While Mr. Wielepski lay face down unconscious on the pavement, Officer Kuhnmuench searched Mr. Wielepski's trousers pockets. Officer Kuhnmuench extracted Mr. Wielepski's wallet and a fist full of money totaling twenty-eight hundred dollars (\$2,800.00) in cash that Mr. Wielepski had won at the Oneida Casino that night.

22. On information and belief Sergeant Corwin saw Officer Kuhnmuench take the twenty-eight hundred dollars (\$2,800.00) in cash from Mr. Wielepski's trousers.

23. Neither Officer Kuhnmuench, Sergeant Corwin nor Unknown, Unnamed Employees of the City of West Allis ever returned Mr. Wielepski's wallet or the twenty-eight hundred dollars (\$2,800.00) in cash to Mr. Wielepski.

23. Neither Officer Kuhnmuench, Sergeant Corwin nor Unknown, Unnamed Employees of the City of West Allis prepared a property inventory of the personal property that Officer Kuhnmuench took from Mr. Wielepski.

24. In the days following his arrest, Mr. Wielepski made repeated phone calls and visits to the West Allis Police Department seeking return of his wallet and his twenty-eight hundred dollars (\$2,800.00) in cash, but the police representatives he spoke to claimed to know nothing

about the wallet or the cash.

25. Officer Kuhnmuench, Sergeant Corwin and/or Unknown, Unnamed Employees of the City of West Allis intentionally and without Mr. Wielepski's consent unlawfully kept the twenty-eight hundred dollars (\$2,800.00) in cash for themselves.

26. Neither Officer Kuhnmuench nor Sergeant Corwin attempted to dissuade or prevent the other from exerting unreasonable and excessive force against Mr. Wielepski or from depriving him of his twenty-eight hundred dollars (\$2,800.00) in cash as alleged, above.

27. Officer Kuhnmuench and Sergeant Corwin willfully, wantonly and recklessly exerted unreasonable and excessive force against Mr. Wielepski.

28. Officer Kuhnmuench, Sergeant Corwin and/or Unknown, Unnamed Employees of the City of West Allis willfully, wantonly and recklessly permanently deprived Mr. Wielepski of his twenty-eight hundred dollars (\$2,800.00).

PLAINTIFFS' FIRST CAUSE OF ACTION UNDER 42 U.S.C. § 1983

29. Plaintiff realleges and incorporates as if fully set forth herein the allegations contained in paragraphs one (1) through twenty-eight (28), above.

30. The force defendants Kuhnmuench and Corwin used in arresting Mr. Wielepski was excessive and unreasonable and, therefore, unconstitutional because it constitutes an unreasonable seizure of plaintiff in deprivation of his rights as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution. Defendants Kuhnmuench and Corwin are therefore jointly and severally liable to plaintiff under 42 U.S.C. § 1983.

31. Defendants Kuhnmuench's and Corwin's actions in failing to prevent the

deprivation of plaintiff's rights by others as alleged herein when they had an opportunity and duty to do so further constitute a deprivation of plaintiff's rights as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution, and likewise subject defendants Kuhnmuench and Corwin to joint and several liability to plaintiffs under 42 U.S.C. § 1983.

32. The City of West Allis had a policy and custom of failing to adequately train its police officers in the lawful use of force upon arrest.

33. The unlawful actions of defendants Kuhnmuench and Corwin as alleged in this Complaint were taken according to the the policy and custom of defendant City of West Allis.

34. As a direct, foreseeable and proximate result of defendants Kuhnmuench's and Corwin's unlawful actions as alleged in this Complaint, plaintiff suffered injuries and damages in the form of financial loss, emotional distress, humiliation, and other injuries which are continuing into the foreseeable future.

35. Defendants Kuhnmuench's and Corwin's unlawful actions as alleged in this Complaint were taken with willful, wanton and reckless disregard of plaintiffs' rights.

PLAINTIFF'S SECOND CAUSE OF ACTION UNDER 42 U.S.C. § 1983

36. Plaintiff realleges and incorporates as if fully set forth herein the allegations contained in paragraphs one (1) through thirty-five (35), above.

37. The actions and inactions of Officer Kuhnmuench, Sergeant Corwin and/or Unknown, Unnamed Employees of the City of West Allis in taking Mr. Wielepski's twenty-eight hundred dollars (\$2,800.00) from him and failing and refusing to return it to him constitutes a deprivation of Mr. Wielepski's property without due process of law in violation of Mr.

Wielepski's substantive rights under the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution.

38. Defendant Corwin's actions and inaction and the action and inaction of Unknown, Unnamed Employees of the City of West Allis in failing to prevent the deprivation of plaintiff's rights alleged herein when they had an opportunity and duty to do so further constitutes a deprivation of plaintiff's rights as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, and likewise subject defendants to joint and several liability to plaintiff under 42 U.S.C. § 1983.

39. The actions and inactions of defendants as alleged in this Complaint constitute a regular custom of defendant City of West Allis in encouraging, condoning and permitting the deprivation of cash and other items of value from arrestees such as Mr. Wielepski.

40. The City of West Allis had a policy and custom of failing to monitor dash cams to prevent theft by officers and failing to institute adequate training and procedures to prevent officers such as Kuhnmuench, Corwin and Unknown, Unnamed Employees of the City of West Allis from depriving arrestees such as Mr. Wielepski of their cash and valuables.

41. The unlawful actions of defendants Kuhnmuench, Corwin and Unknown, Unnamed Employees of the City of West Allis as alleged in this Complaint were taken according to policies and customs of defendant City of West Allis.

42. As a direct, foreseeable and proximate result of defendants' unlawful actions as alleged in this Complaint, plaintiff suffered injuries and damages in the form of financial loss, emotional distress, humiliation, and other injuries which are continuing into the foreseeable future.

43. Defendants Kuhnmuench's, Corwin's and Unknown, Unnamed Employees of the

City of West Allis' unlawful actions as alleged in this Complaint were taken with willful, wanton and reckless disregard of plaintiffs' rights.

PRAYER FOR RELIEF

WHEREFORE plaintiff prays this Court enter Judgement against each named defendant jointly and severally on each of plaintiff's causes of action and award plaintiff the following relief:

A. Declare that the force used by defendants Kuhnmuench and Corwin in arresting plaintiff was excessive and unreasonable under the circumstances and therefore constituted an infringement of plaintiff's right to be free from unreasonable searches and seizures as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution.

B. Declare that defendants Kuhnmuench's and Corwin's and Unknown, Unnamed Employees of the City of West Allis' taking of plaintiff's twenty-eight hundred dollars (\$2,800.00) in cash and failing and refusing to return it to him deprived plaintiff of his property without due process and, therefore, constituted a violation of plaintiff's substantive rights as guaranteed by the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution.

C. Order defendants, jointly and severally, to pay to plaintiff an amount sufficient to compensate him for his monetary loss, his past and future physical and emotional pain and suffering and distress which was proximately caused by defendants' unlawful actions.

D. Order defendants Kuhnmuench, Corwin and Unknown, Unnamed Employees of the City of West Allis to pay to plaintiff an amount sufficient to punish them for their willful, wanton and reckless deprivations of plaintiff's rights and to deter said defendants and others similarly situated and inclined from further deprivations of the rights of this plaintiff and others.

E. Order defendants to return to plaintiff any property of plaintiffs which defendants are unlawfully holding.

F. Order defendants to pay plaintiff's costs, disbursements and attorneys' fees reasonably incurred in this action.

G. Order such other and further relief as is just and proper under the circumstances.

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF SIX QUALIFIED PERSONS.

Dated this 20th day of July, 2017.

A. STEVEN PORTER AND KASIETA LEGAL GROUP, LLC, BY ROBERT J. KASIETA

By: /s/ A. Steven Porter

A. Steven Porter
State Bar No. 01000195
Attorneys for Plaintiff
David P. Wielepski

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