

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION

JERRY THOMAS COEN,	:	
	:	
Plaintiff,	:	
	:	
VS.	:	
	:	NO. 5:16-CV-353 (MTT)
	:	
Commissioner HOMER BRYSON;	:	
<i>et al.</i> ,	:	
	:	
Defendants.	:	

**ORDER AND RECOMMENDATION**

Plaintiff **JERRY THOMAS COEN**, a prisoner at Central State Prison in Macon, Georgia, has filed a *pro se* civil rights complaint under 42 U.S.C. § 1983 and an amended complaint. ECF Nos. 1, 8. He has paid the \$400.00 filing fee. After conducting a preliminary review of Plaintiff’s complaint and amended complaint, as required by 28 U.S.C. § 1915A(a), the Undersigned finds that Plaintiff’s allegations are sufficient to allow his claims against all Defendants to go forward for further factual development. Plaintiff is now **DIRECTED** to serve the individual Defendants pursuant to Rule 4 of the Federal Rules of Civil Procedure.

Also pending before the Court is a motion for an injunction filed by another inmate, Timothy O’Neal Bell. ECF No. 6. The Undersigned **RECOMMENDS** that this motion be **DENIED** without prejudice to Mr. Bell filing his own separate § 1983 complaint.

**I. Preliminary Screening**

A. Standard of Review

Pursuant to 28 U.S.C. § 1915A(a), a federal court is required to conduct an initial

screening of a prisoner complaint “which seeks redress from a governmental entity or officer or employee of a governmental entity.” Section 1915A(b) requires a federal court to dismiss a prisoner complaint that is: (1) “frivolous, malicious, or fails to state a claim upon which relief may be granted”; or (2) “seeks monetary relief from a defendant who is immune from such relief.”

A claim is frivolous when it appears from the face of the complaint that the factual allegations are “clearly baseless” or that the legal theories are “indisputably meritless.” *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993) (citations omitted). A complaint fails to state a claim when it does not include “enough factual matter (taken as true)” to “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007) (noting that “[f]actual allegations must be enough to raise a right to relief above the speculative level,” and that the complaint “must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action”) (quotations and citations omitted); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 667 (2009) (explaining that “threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice”).

In making the above determinations, all factual allegations in the complaint must be viewed as true. *Brown v. Johnson*, 387 F.3d 1344, 1347 (11th Cir. 2004). Moreover, “[p]ro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed.” *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998).

In order to state a claim for relief under § 1983, a plaintiff must allege that: (1) an act or omission deprived him of a right, privilege, or immunity secured by the Constitution or a statute of the United States; and (2) the act or omission was committed by a person acting

under color of state law. *Hale v. Tallapoosa Cty.*, 50 F.3d 1579, 1581 (11th Cir. 1995). If a litigant cannot satisfy these requirements, or fails to provide factual allegations in support of his claim or claims, then the complaint is subject to dismissal. *See Chappell v. Rich*, 340 F.3d 1279, 1282-84 (11th Cir. 2003) (affirming the district court's dismissal of a § 1983 complaint because the plaintiff's factual allegations were insufficient to support the alleged constitutional violation). *See also* 28 U.S.C. § 1915A(b) (dictating that a complaint, or any portion thereof, that does not pass the standard in § 1915A "shall" be dismissed on preliminary review).

#### B. Factual Allegations and Plaintiff's Claims

Plaintiff states that he is "profoundly deaf" and his "native language is American Sign Language." Doc. 1 at 5. He complains that the Defendants, through their practices and procedures, have discriminated against him in violation of the American with Disabilities Act, 42 U.S.C. § 12131 *et seq.*; the Rehabilitation Act, 29 U.S.C. § 794 *et seq.*; the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-2 *et seq.*; and the United States Constitution.

Plaintiff states that he cannot use the standard phones available in Georgia's prison system to communicate, and the teletypewriter or TTY phone service for the hearing-impaired is inaccessible, inoperable, and outdated. Doc. 1 at 5. As a result, he has no means to communicate with individuals outside of the prison, including family, friends, lawyers, and advocates for the deaf. Doc. 1 at 5, 8. He complains that the Defendants have failed to provide him with access to auxiliary aids or services necessary to enable him to participate in educational, religious, rehabilitative, and other services available to similarly situated non-deaf inmates. Doc. 1 at 5-8. Plaintiff states that there

no American Sign Language interpreters present during disciplinary proceedings. Doc. 1 at 9. As a result, he is denied the ability to meaningfully participate and defend himself during these proceedings. Doc. 1 at 9.

In his amended complaint, Plaintiff raises essentially the same claims but adds Defendants Mizell Davis; Rachael Moncrief; Lieutenants Basely, Childress, and Phillip; and Captain Hall. Doc. 8 at 4.<sup>1</sup> As with Plaintiff's original complaint, Plaintiff alleges each of these named Defendants violated his constitutional and statutory rights. *Id.* at 6.

Plaintiff seeks injunctive relief and damages.

These allegations, when liberally construed in Plaintiff's favor, are sufficient to allow Plaintiff's complaint to go forward against all of the named Defendants.

## **II. Motion for Injunction**

Movant Timothy O'Neal Bell, a blind inmate who is also housed at the Central State Prison, has filed a motion seeking an injunctive and declaratory relief, contending he is "entitled to the same compensation for deliberate discriminatory treatment same as the original Plaintiff." Mot. Inj. 1, ECF No. 6. Movant further contends that this allegedly discriminatory treatment entitles him to relief under 42 U.S.C. § 1983. *Id.*

The gist of Movant's motion is that he wishes to join in Plaintiff's presently-pending lawsuit. *See* Mot. Inj. 1. The Prison Litigation Reform Act of 1995 (the "PLRA") prohibits prisoners from joining together to litigate their claims in this manner. The PLRA requires that a prisoner bringing a civil action *in forma pauperis* be

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<sup>1</sup>Plaintiff may amend his complaint once as a matter of right at this stage of the litigation. *See* Fed. R. Civ. P. 15(a). As such, the Undersigned has considered the allegations contained in Plaintiff's amended complaint. The Undersigned also notes that some of these Defendants were listed in the caption of Plaintiff's original complaint.

responsible for this Court's filing fee. 28 U.S.C. § 1915(b). The Eleventh Circuit Court of Appeals has held that prisoners proceeding *in forma pauperis* are not allowed to join together as plaintiffs in a single lawsuit and pay only a single filing fee. Instead, each prisoner must file his own lawsuit and pay the full filing fee. *Hubbard v. Haley*, 262 F.3d 1194, 1198 (11th Cir. 2001). As the Eleventh Circuit in *Hubbard* noted, requiring each plaintiff to pay the full filing fee is consistent with Congress's purpose of imposing costs on prisoners to deter frivolous suits. *Id.* at 1197-98. Allowing Movant to join in this lawsuit at this stage of the litigation would enable Movant to avoid paying a filing fee and therefore run afoul of the Eleventh Circuit's reasoning in *Hubbard*.

Furthermore, a § 1983 plaintiff may set forth only related claims in one civil rights complaint. He may not join unrelated claims and defendants unless the claims arise "out of the same transaction, occurrence, or series of transactions or occurrences; and . . . any question of law or fact common to all defendants will arise in the action." Fed. R. Civ. P. 20(a)(2)(A)-(B). "[A] claim arises out of the same transaction or occurrence if there is a logical relationship between the claims." *Construction Aggregates, Ltd. v. Forest Commodities Corp.*, 147 F.3d 1334, 1337 n.6 (11th Cir. 1998). Movant's motion does not make clear that there is a logical relationship between his claims and Plaintiff's claims. Plaintiff's complaint and amended complaint detail the challenges he faces as a deaf inmate, but Movant has alleged he is blind, not deaf. Movant has not explained in his motion why the conditions about which Plaintiff complains are also applicable to Movant's own situation.

The Undersigned therefore **RECOMMENDS** that Movant's motion be **DENIED**

without prejudice to his filing his own separate § 1983 claim. The Clerk of Court is **DIRECTED** to forward Movant a copy of the Court's standard § 1983 forms and the necessary forms to permit Movant to move to proceed *in forma pauperis*.

### **III. Conclusion**

For the foregoing reasons, the Undersigned concludes that Plaintiff's claims against all named Defendants must proceed for further factual development. Because Plaintiff is not proceeding *in forma pauperis*, he is responsible for serving all of the named Defendants. Accordingly, it is hereby **ORDERED** that Plaintiff be provided the necessary documents with which to accomplish service upon the Defendants. It is further **ORDERED** that the Defendants file a Waiver of Reply, an Answer or such other response as may be appropriate under Rule 12 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1915, and the Prison Litigation Reform Act. Defendants are reminded of the duty to avoid unnecessary service expenses and of the possible imposition of expenses for failure to waive service pursuant to Rule 4(d).

### **OBJECTIONS**

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to these recommendations with the Honorable Marc T. Treadwell, United States District Judge, **WITHIN FOURTEEN (14) DAYS** after being served with a copy of this Recommendation. The parties may seek an extension of time in which to file written objections, provided a request for an extension is filed prior to the deadline for filing written objections. Failure to object in accordance with the provisions of § 636(b)(1) waives the right to challenge on appeal the district judge's order based on factual and legal

conclusions to which no objection was timely made. *See* 11th Cir. R. 3-1.

**DUTY TO ADVISE OF ADDRESS CHANGE**

During the pendency of this action, all parties shall at all times keep the Clerk of this Court and all opposing attorneys and/or parties advised of their current address. Failure to promptly advise the Clerk of any change of address may result in the dismissal of a party's pleadings.

**DUTY TO PROSECUTE ACTION**

Plaintiff must diligently prosecute his complaint or face the possibility that it will be dismissed under Rule 41(b) of the Federal Rules of Civil Procedure for failure to prosecute. Defendants are advised that they are expected to diligently defend all allegations made against them and to file timely dispositive motions as hereinafter directed. This matter will be set down for trial when the Court determines that discovery has been completed and that all motions have been disposed of or the time for filing dispositive motions has passed.

**FILING AND SERVICE OF MOTIONS, PLEADINGS, DISCOVERY AND CORRESPONDENCE**

It is the responsibility of each party to file original motions, pleadings, and correspondence with the Clerk of Court. A party need not serve the opposing party by mail if the opposing party is represented by counsel. In such cases, any motions, pleadings, or correspondence shall be served electronically at the time of filing with the Court. If any party is not represented by counsel, however, it is the responsibility of each opposing party to serve copies of all motions, pleadings, and correspondence upon the unrepresented party and to attach to said original motions, pleadings, and correspondence filed with the Clerk of Court a certificate of service indicating who has been served and

where (i.e., at what address), when service was made, and how service was accomplished (i.e., by U.S. Mail, by personal service, etc.).

### **DISCOVERY**

Plaintiff shall not commence discovery until an answer or dispositive motion has been filed on behalf of the defendants from whom discovery is sought by the plaintiff. The Defendants shall not commence discovery until such time as an answer or dispositive motion has been filed. Once an answer or dispositive motion has been filed, the parties are authorized to seek discovery from one another as provided in the Federal Rules of Civil Procedure. The deposition of the Plaintiff, a state/county prisoner, may be taken at any time during the time period hereinafter set out provided prior arrangements are made with his custodian. **Plaintiff is hereby advised that failure to submit to a deposition may result in the dismissal of his lawsuit under Rule 37 of the Federal Rules of Civil Procedure.**

IT IS HEREBY ORDERED that discovery (including depositions and the service of written discovery requests) shall be completed within 90 days of the date of filing of an answer or dispositive motion by the defendant (whichever comes first) unless an extension is otherwise granted by the court upon a showing of good cause therefor or a protective order is sought by the defendants and granted by the court. This 90-day period shall run separately as to Plaintiff and each Defendant beginning on the date of filing of each Defendant's answer or dispositive motion (whichever comes first). The scheduling of a trial may be advanced upon notification from the parties that no further discovery is contemplated or that discovery has been completed prior to the deadline.



Discovery materials shall not be filed with the Clerk of Court. No party shall be required to respond to any discovery not directed to him/her or served upon him/her by the opposing counsel/party. The undersigned incorporates herein those parts of the Local Rules imposing the following limitations on discovery: except with written permission of the court first obtained, **interrogatories** may not exceed TWENTY-FIVE (25) to each party, **requests for production of documents and things** under Rule 34 of the Federal Rules of Civil Procedure may not exceed TEN (10) requests to each party, and **requests for admissions** under Rule 36 of the Federal Rules of Civil Procedure may not exceed FIFTEEN (15) requests to each party. No party shall be required to respond to any such requests which exceed these limitations.

**REQUESTS FOR DISMISSAL AND/OR JUDGMENT**

The Court shall not consider requests for dismissal of or judgment in this action, absent the filing of a motion therefor accompanied by a brief/memorandum of law citing supporting authorities. Dispositive motions should be filed at the earliest time possible, but in any event no later than one hundred-twenty (120) days from when the discovery period begins, unless otherwise directed.

So **ORDERED AND RECOMMENDED**, this 15th day of February, 2017.

S/ Stephen Hyles  
UNITED STATES MAGISTRATE JUDGE