

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

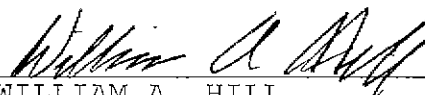
FILED
DES MOINES, IOWA
2004 APR 13 AM 9:13
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

ARCHIE BEAR, et al., *
Plaintiffs, * No. 4:01-CV-40456
vs. *
WALTER KAUTZKY, et al., * **DEFENDANTS' APPENDIX**
Defendants. *

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PROOF OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was

personally delivered

mailed

sent via telefax

to each party of record at their last known address

on April 12, 2004

Kathleen A. Pitto

FORM A

FORM TO BE USED BY A PRISONER IN FILING A COMPLAINT UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. §1983

IN THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF IOWA

FILED
GREGORY A. JONES
2001 JUL 27 PM 12:40
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

Archie Bear

William Stringer

Michael McBride

4:01-CV-80456

(Enter above the FULL name and inmate number of the plaintiff or plaintiffs in this action)

vs.

COMPLAINT

Walter C. Kautzky

John Mathes

(Enter above the FULL name of each defendant in this action)

(NOTE: If there is more than ONE plaintiff, a separate sheet should be attached giving the information in parts I and II below for EACH plaintiff by name.)

I. Previous Lawsuits:

- A. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise relating to your imprisonment? Yes () No (✓)
- B. If your answer to A is Yes, please answer the questions 1 thru 7 on next page. (If there is more than one lawsuit describe the additional lawsuits on another sheet of paper using the same outline.)

Pleading # 1

1. Parties to this previous lawsuit

Plaintiffs N/A

Defendants N/A

2. Court (if federal court, name the district; if state court, name the county)

N/A

3. Docket Number N/A

4. Name of judge to whom case was assigned

N/A

5. Disposition, if known (for example: Was the case dismissed? Was it appealed? Is it still pending?)

N/A

6. Approximate date of filing lawsuit N/A

7. Approximate date of disposition N/A

II. Place of Present Confinement Iowa State Penitentiary

A. Is there a prisoner grievance procedure in this institution? Yes [] No []

B. Did you present the facts relating to your complaint in the state prisoner grievance procedure? Yes [] No []

C. If your answer is YES,

1. What steps did you take? Yes. Filed a grievance with John Mathes by inmate memo. He advised that we must go through contract attorney even though the contract attorney

2. What was the result? does not provide help on actually litigating criminal cases. A copy of John Mathes' response will become an exhibit in these proceedings.

D. If your answer is NO, explain why not N/A

E. If there is no prison grievance procedure in the institution did you complain to prison authorities? Yes [] No []

RECEIVED

AUG - 3 2001

IOWA DEPT OF JUSTICE

FILED OBJECTIONS

DES MOINES, IOWA

01 JUL 27 PM 4:40

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IA

ARCHIE BEAR,
WILLIAM STRINGER, and
MICHAEL McBRIDE,

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No. 4-01-cv-80456

Plaintiffs,

vs.

INITIAL REVIEW ORDERS

WALTER KAUTZKY, and
JOHN MATHES,

Defendants.

The court has before it for initial review a pro se complaint submitted by inmates of the Iowa State Penitentiary. The complaint is signed only by plaintiff Bear. The court directs inmates Stringer and McBride to submit a signed copy of the signature page of the complaint if they wish to be plaintiffs in the lawsuit. The court conditionally treats all three inmates as plaintiffs in the lawsuit. If inmate Stringer or inmate McBride do not intend to be plaintiffs in this lawsuit they must promptly inform the court of their intention.

The complaint is brought under 42 U.S.C. § 1983 and jurisdiction is predicated on 28 U.S.C. § 1343. Plaintiffs seek injunctive and declaratory relief and damages. Plaintiffs also seek a temporary restraining order. Plaintiffs have paid the \$150.00 filing fee.

"To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of

Pleading # 4

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the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." West v. Atkins, 487 U.S. 42, 48 (1988). A pro se complaint in a proceeding in forma pauperis must be construed liberally. See Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam). However, it can be dismissed on initial review if the claim is malicious or frivolous, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e). A claim is "frivolous" if it "lacks an arguable basis in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989).

Plaintiffs assert that on June 22, 2001, Warden Mathes notified plaintiffs that all jailhouse lawyering would be eliminated on July 27, 2001. The wardens were instructed to tell inmates to use Peter Hanson, the contract attorney, for legal advice. Plaintiff allege defendants' actions violate plaintiffs' First Amendment and Sixth Amendment rights. Plaintiffs' complaint does not appear to be frivolous.

Plaintiffs ask the court to issue a temporary restraining order preventing defendants from instituting the new policy and preventing defendants from disciplining plaintiffs for receiving jailhouse lawyer assistance on their pending challenges to criminal convictions.

In The United States District Court
Southern District of Iowa
Central Division

FILED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
2001 JUL 27 PM 12:41
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

No. 4:01-CV-80456

Archie Bear, and
William Stringer, and
Michael McBride,
Plaintiffs,

vs.

Walter L. Kautzky, and
John Mathes,
Defendants.

Motion Requesting A Temporary
Restraining Order And/or
Preliminary Injunction

presenting
^

Plaintiffs Archie Bear, William Stringer and Michael McBride, pro se, pursuant to Rule 65 FRCP, requests this court to grant them a temporary injunction and/or preliminary injunction the defendants, Walter Kautzky and John Mathes from enforcing the new prison policies, INT-V-03 and ISP policy 85-2-13-612 ER for the following reasons:

1. Said policies will effectively deprive the plaintiff's guaranteed constitutional right of access to the courts on their pending state and federal claims challenging violations of their constitutional rights.
2. Said policies also eliminate communications with the inmates who are assisting the plaintiff's in preparation and going forward with their pending claims.
3. The prison fails to protect the plaintiff's fundamental constitutional right to adequate, effective, and meaningful access to the courts to challenge violations of constitutional

Pleading # 2

1.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

ARCHIE BEAR, et al., *
Plaintiffs, * No. 4:01-CV-40456
vs. *
WALTER KAUTZKY, et al., * **AFFIDAVIT OF**
Defendants. * **FRED SCALETTA**

State of Iowa: ss.
County of Polk:


I, Fred Scaletta, being duly sworn on oath, state as follows:

1. I am employed as the Executive Officer III for the Iowa Department of Corrections.

2. As an Executive Officer III, I have access to the records of all inmates within the Iowa Department of Corrections.

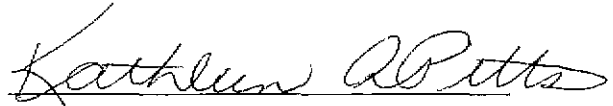
3. The records of the Iowa Department of Corrections establish that inmate Archie Bear (#0045540) currently incarcerated at the Anamosa State Penitentiary ("ASP") in Anamosa, Iowa, and has been so since November 1, 2001.

4. Bear had been at the Iowa State Penitentiary ("ISP") in Fort Madison, Iowa from March 14, 2000 until November 1, 2001.



FRED SCALETTA

Subscribed and sworn to before me on this 12th day of
April, 2004.


NOTARY PUBLIC
STATE OF IOWA

Copy mailed to:

Mr. Bruce Nestor
529 South 7th Street #636
Minneapolis, MN 55415
ATTORNEY FOR PLAINTIFF

