

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

LEMUEL O. TAYLOR,	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 18-436WES
	:	
JEFFREY ACETO, CAPTAIN DUFFY,	:	
LT. JUSTIN AMARAL,	:	
SIU INVESTIGATOR FIGUEROA,	:	
OFFICER BASTINE, OFFICER BARBER,	:	
PATRICIA COYNE-FAGUE,	:	
C/O MARVILLIE, and C/O CRIG,	:	
Defendants.	:	

REPORT AND RECOMMENDATION

Patricia A. Sullivan, United States Magistrate Judge

On August 9, 2018, Plaintiff Lemuel O. Taylor filed a *pro se*, handwritten complaint against nine employees of the Adult Correctional Institutions. ECF No. 1. Along with his complaint, Plaintiff filed an Application to Proceed without Prepayment of Fees and Affidavit (the “IFP Motion”), ECF No. 2, which has been referred to me for determination.¹

As an initial matter, the Court cannot rule on the IFP Motion because Plaintiff has not submitted a copy of his prisoner trust fund account statement certified by an appropriate official at the Adult Correctional Institutions as required by 28 U.S.C. § 1915(a)(2).² Accordingly,

¹ On August 9, 2018, Plaintiff also filed a one-page form motion for appointment of counsel. ECF No. 3. Based on my recommendation that Plaintiff’s complaint fails to survive the Court’s screening process and must be amended in order to stay alive and the fact that Plaintiff has not established his indigence, I am denying without prejudice his motion to appoint counsel in a separate text order.

² Section 1915(a)(2) provides:

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), **shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the**

Plaintiff is instructed to file within thirty days of the Court's adoption of this report and recommendation a certified copy of his prisoner trust fund account statement for the six-month period immediately preceding the filing of his complaint on August 9, 2018.

Further, Plaintiff's request for *in forma pauperis* status renders this case subject to preliminary screening under 28 U.S.C. § 1915(e)(2)(B). Based on my liberal review of Plaintiff's complaint,³ I find that the Court is unable to determine if it states a claim upon which relief may be granted by this Court. Accordingly, in addition to filing a certified copy of his prisoner trust fund account statement, I recommend that Plaintiff be ordered to file an amended complaint to cure the deficiencies described in this report and recommendation; otherwise, I recommend that the case be dismissed without prejudice. 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b)(1).

The legal standard for dismissing a complaint for failure to state a claim pursuant to § 1915(e)(2) is the same as that used when ruling on a Rule 12(b)(6) motion to dismiss. Hodge v. Murphy, 808 F. Supp. 2d 405, 408 (D.R.I. 2011). To survive a motion to dismiss, a complaint must contain sufficient factual allegations to "state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A viable complaint must also satisfy Fed. R. Civ. P. 8(a), which requires a plaintiff to include "a short and plain statement of the grounds for the court's jurisdiction . . . and of the claim showing that the pleader is entitled to relief," as well as Fed. R. Civ. P. 10(b), which

filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

28 U.S.C. § 1915(a)(2) (bold added).

³ Because Plaintiff is *pro se*, a liberal construction of the relevant pleading is appropriate. See Hughes v. Rowe, 449 U.S. 5, 9 (1980); Haines v. Kerner, 404 U.S. 519, 520-21 (1972); Instituto de Educacion Universal Corp. v. U.S. Dep't of Educ., 209 F.3d 18, 23 (1st Cir. 2000).

requires that the claims be set out in numbered paragraphs, each limited to a single set of circumstances.

Plaintiff's complaint does not comply with the requirements either of Rule 8(a) or of Rule 10(b) in that his statement of the claim is four pages of tightly-packed handwritten stream of consciousness, without breaks for sentences or paragraphing and with no margins. The result is largely unreadable and what is readable is very difficult to comprehend. In performing its duty to screen, the Court has attempted several times to read Plaintiff's filing but has found it impossible to ascertain which defendants are being accused of which actions or inactions. Because of these deficiencies, in its current state, the complaint fails to set forth the "who, what, when, where and why" information that are essential for a plausible claim. Kilby v. Johnson & Wales Univ., No. CA 14-217 ML, 2014 WL 2196942, at *2 (D.R.I. May 27, 2014) (dismissing complaint that "fails to set forth the 'who, what, when, where and why' information necessary for a plausible claim, [and] fails to identify the legal basis for bringing an action"). Before such a complaint is served at public expense, it must be brought into conformity with Rules 8(a) and 10(b) so that the Court can assess whether it should survive § 1915(e)(2) scrutiny.

Based on the foregoing, I recommend that Plaintiff be directed to file an amended complaint that complies with Rules 8 and 10 as follows:

1. Plaintiff must set forth the claim in separately-numbered paragraphs, with each paragraph limited to a single set of circumstances;
2. Plaintiff must connect each defendant to a specific set of facts so that a reader can understand what each defendant is accused of;
3. Plaintiff should use print large enough to be read; and

4. Plaintiff should use one-inch margins so that the words on the edge of the page are not obliterated when each page is copied.

In conclusion, within thirty days of the Court's adoption of this report and recommendation, Plaintiff is ordered to provide a certified copy of his prisoner trust fund account statement for the six-month period immediately preceding the filing of his complaint on August 9, 2018. Additionally, I recommend that the Court order Plaintiff to file an amended complaint that conforms with the requirements set forth above within thirty days of the Court's adoption of this report and recommendation. If Plaintiff fails to file an amended complaint, or if the amended complaint fails to cure the deficiencies noted in this report and recommendation or otherwise fails to state a claim, or is frivolous or malicious, I recommend that the complaint be dismissed without prejudice. 28 U.S.C. § 1915(e)(2).

Any objection to this report and recommendation must be specific and must be served and filed with the Clerk of the Court within fourteen (14) days after its service on the objecting party. See Fed. R. Civ. P. 72(b)(2); DRI LR Cv 72(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district judge and the right to appeal the Court's decision. See United States v. Lugo Guerrero, 524 F.3d 5, 14 (1st Cir. 2008); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Patricia A. Sullivan
PATRICIA A. SULLIVAN
United States Magistrate Judge
September 24, 2018