

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

LEO E. STRINE, JR.
VICE CHANCELLOR

New Castle County Courthouse
Wilmington, Delaware 19801

Date Submitted: August 11, 2009

Date Decided: August 13, 2009

Kenneth Abraham
SBI# 00173040
James T. Vaughn Correctional Center
1181 Paddock Road
Smyrna, DE 19977

RE: Kenneth Abraham v. State of Delaware Department of Correction, et al.
C.A. No. 4801-VCS

Dear Mr. Abraham:

This letter addresses Kenneth Abraham's request for leave of this court to file his self-styled "Petition for TRO, Preliminary and Permanent Injunctions."

Abraham, an inmate in the Delaware Department of Correction's James T. Vaughn Correctional Center in Smyrna, seeks to bring suit against the Department of Correction, that Department's Commissioner, Correctional Medical Services, Inc., and the warden of the facility that houses him. Abraham alleges that the defendants have not provided him with adequate medical care and, more generally, have violated his constitutional and statutory rights. Pursuant to an order of this court in a previous case, however, Abraham needs leave of this court to bring those claims.¹ Accordingly, he now

¹ *Abraham v. D.O.C. — Delaware Department of Corrections*, 2008 WL 242026, at *2 (Del. Ch. Jan. 24, 2008).

seeks that permission as well as an order relieving him of his obligation to pay filing fees and other court costs. But, he is seeking to litigate in this court claims that he has already raised in several federal cases, including cases that are pending. And, as this court already held in another action that Abraham brought, under § 8803(b) of Title 10 of the Delaware Code a litigant cannot litigate *in forma pauperis* on an issue that he has already brought in another court.² Accordingly, I deny Abraham's request for leave to file his Petition.

In his Petition, Abraham alleges a variety of grave abuses by Department of Correction personnel. The specific impetus for this action are the defendants' alleged failures to provide Abraham with either a hearing aid or surgery that he alleges is needed because of an enlarged prostate. But, as set out in Abraham's Petition, this is only one aspect of a pattern of abuse which Abraham claims to have suffered. This includes allegations that some Department of Correction personnel have "manufactured" false charges³ and are "out-of-control, criminal, lying, malicious [individuals] who are looking for any excuse to attack, punish, [or] retaliate . . . against" Abraham.⁴ Those general claims are the subject of at least three ongoing federal court cases, and Abraham claims

² *Id.* at *1.

³ Petition for TRO, Preliminary and Permanent Injunctions ("Petition") ¶¶ 39 (alleging that Department of Correction personnel have "manufactured wholly FALSE charges" against Abraham (emphasis in original)).

⁴ Petition ¶ 48.

that he is planning a new federal civil rights action.⁵ Abraham, however, is unsatisfied with the way the federal courts have processed his case. In his Petition he claims that “the Federal Judges simply *do not want to deal with it*. They ignore the facts — *serious problems*, ignore the law too, allowing them to reach obviously distorted conclusions. It is a ‘*Judicial Twilight Zone*.’”⁶ Accordingly, Abraham now seeks a different outcome in this court.

But, 10 *Del. C.* § 8803(b) prevents this court from allowing a litigant to proceed *in forma pauperis* on a claim that he has already asserted in another court:

Upon establishing the amount of fees and costs to be paid, the court shall review the complaint. Upon such review, the complaint shall be dismissed if the court finds the action is factually frivolous, malicious or, upon a court's finding that the action is legally frivolous and that even a *pro se* litigant, acting with due diligence, should have found well settled law disposing of the issue(s) raised.⁷

A complaint is malicious for purposes of § 8803(b) if it “realleges pending or previously litigated claims.”⁸ In other words, after granting a litigant’s request to proceed *in forma pauperis*, a court is required to evaluate the litigant’s complaint to determine whether the litigant is raising an issue that is already before another court. If that is the case, then the General Assembly mandates that this court defer to that earlier case and dismiss the case before it.

⁵ Petition ¶¶ 38, 39. Abraham has not attached his federal complaints to this action, but he admits in his Petition that his federal claims allege many of the abuses claimed in his Petition. Petition ¶¶ 38, 39.

⁶ Petition ¶ 50 (emphasis in original).

⁷ 10 *Del. C.* § 8803(b).

⁸ 10 *Del. C.* § 8801(7).

Notably, this court has already applied § 8803(b) in rejecting Abraham's efforts to have this court adjudicate issues that have already been brought in federal court. Specifically, in January of last year Abraham filed a complaint with this court alleging that Department of Correction personnel were interfering with his efforts to conduct research for one of his federal cases and that Department personnel had retaliated against him for filing that suit and asked that he be allowed to proceed *in forma pauperis*. Even though the court found that Abraham was indigent, the court also concluded that Abraham's claim was asserting issues relating to his earlier federal case. Accordingly, the motion to proceed *in forma pauperis* was granted, but his claim was dismissed.⁹ And, because Abraham had filed a malicious claim as defined by the relevant statute, this court also required that he file an affidavit that complies with 10 *Del. C.* § 8803(e) and obtain leave of this court before bringing any new claims.¹⁰ Among other requirements, § 8803(e) requires an affirmation that "[t]he claims sought to be litigated have never been raised or disposed of before in any court."¹¹

Although Abraham has filed that affidavit as part of this action, a reading of his Petition reveals that Abraham is once again attempting to litigate issues that he has already placed before the federal courts and accordingly leave to file his claims is not

⁹ *Abraham*, 2008 WL 242026 at *1-2.

¹⁰ *Abraham*, 2008 WL 242026 at *2.

¹¹ 10 *Del. C.* § 8803(e).

appropriate. His Petition alleges an ongoing series of abuses by the Department of Correction and related parties that Abraham claims has deprived him of rights, including that he has been denied access to the materials he needs to prosecute his federal cases.¹² Indeed, in several instances he has explicitly noted that he is raising facts that are at issue in his federal court cases.¹³ This includes Abraham's acknowledgement that he has complained to the federal courts about denial of the bathroom access he allegedly regularly needs because of his prostate problems and retaliation by prison employees for that medical condition.¹⁴ That is, Abraham has already placed his medical concerns and the various issues related to those concerns at issue in pending federal cases. Nor does it aid Abraham that in addition to reasserting his general claims of abuse, he has also brought forth some apparently new allegations related to his medical care, new only in the sense that they appear to supplement prior concerns already raised in his federal cases.

¹² Petition ¶ 50 (“They have refused *hundreds* of [Abraham's] requests for cases, Rules of Courts, Keycite printouts, and other materials.” (emphasis in original)).

¹³ Petition ¶¶ 38, 39.

¹⁴ Petition ¶¶ 38 (“[Abraham] was denied access to a bathroom, [he] had to and *did* urinate, and [Abraham] was severely punished by [the Department of Correction] for this *uncontrollable medical problem*. Although it is a relatively small matter or portion of the Complaint, this incident is described in the Complaint in case 07-593 filed in U.S. District Court on 9/18/07.” (emphasis in original)); 40 (describing how Abraham has been forced to urinate on the floor because he was denied access to a bathroom and stating “[n]ow, *you have to understand* (and [Abraham] *eventually will prove* in Federal Court) that *some* [Department of Correction] ‘C.O.S.’ are mean spirited, malicious, sadistic ‘little people in uniform,’ seriously maladjusted . . . and who could not care less if a prisoner has to go to the bathroom.” (emphasis in original)); 48 (“The medical conditions described herein therefore place [Abraham] in exceptional danger of immediate harm. Your Honor, should you read my pleadings in Federal Court you will *see* that these clowns are *OUT OF CONTROL*” (emphasis in original)).

In *Tillmon v. Snyder*¹⁵ this court rejected a litigant's attempt to distinguish his Court of Chancery claims from his earlier claims on the basis that the claims in this court arose after the abuse alleged in the federal case. Rather, it was held that the claims were "virtually the same" and that "any new claims . . . could have been and should have been added" to the plaintiff's federal complaint.¹⁶

The situation here is indistinguishable. The claims in Abraham's Petition concern the same course of abuse that Abraham has already raised in several federal cases. Although those claims are serious and Abraham has a right to pursue them, having started an action in federal court, Abraham cannot file a complaint in the Court of Chancery premised on what is essentially the same conduct and ask that this court waive his fees. Rather, under 10 *Del. C.* § 8803(b), this court must defer to the federal courts in which Abraham chose to bring his action. All of his related claims should proceed together in the federal courts and any concerns Abraham has about how his federal cases have been handled must be raised in the federal courts and addressed through the appellate processes available in that system.

¹⁵ 2001 WL 312470 (Del. Ch. Mar. 27, 2001).

¹⁶ *Id.* at *1 n.1.

For the foregoing reasons, Abraham's request for leave to file his Petition is denied.¹⁷ IT IS SO ORDERED.

Very truly yours,

/s/ Leo E. Strine, Jr.

Vice Chancellor

LESJr/eb

cc: Lawrence W. Lewis, Esquire
Register in Chancery

¹⁷ Because I deny Abraham's request for leave of this court to file his Petition, I do not reach his Motion to Proceed *In Forma Pauperis*.