

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**CEDRIC CROSS,
LARRY WILLIAMS,
DANIEL PIPPINS,
COURTNEY MCNEAL, and
CHRISTOPHER FURR,**

Plaintiffs,

vs.

**PHILIP MCLAURIN,
ST. CLAIR COUNTY JAIL,
ST. CLAIR COUNTY MEDICAL STAFF,
MARY ROBINSON-DAVIS, and
ARAMARK,**

Defendants.

Case No. 17-cv-699-JPG

MEMORANDUM AND ORDER

GILBERT, District Judge:

This matter is before the Court for case management. The Complaint was filed by five St. Clair County Jail (“Jail”) inmates, including Cedric Cross, Larry Williams, Daniel Pippins, Courtney McNeal, and Christopher Furr. Plaintiffs filed this civil rights action *pro se* pursuant to 42 U.S.C. § 1983. In the Complaint, Plaintiffs claim that they have been subjected to unconstitutional conditions of confinement at St. Clair County Jail and been denied access to any meaningful grievance process. Together, they seek monetary damages and injunctive relief. All five Plaintiffs have signed the Complaint.

The action was opened without payment of the filing fee or the filing of a Motion and Affidavit to Proceed in District Court Without Prepaying Fees or Costs. Accordingly, on July 5, 2017, the Clerk of Court sent Plaintiffs a letter (Doc. 2) advising that Plaintiffs must prepay the

full filing fee or file an IFP Motion within thirty days. Plaintiffs were also directed to provide a certified copy of their trust fund account statements for the 6-month period immediately preceding the filing of this action (*i.e.* 1/1/2017 through 7/5/2017). To date, only one Plaintiff, Daniel Pippins, has filed an IFP Motion and trust fund account statement. (Doc. 3).

Under the circumstances, the Court deems it necessary to address several preliminary matters before completing a review of this case pursuant to 28 U.S.C. § 1915A.

IFP Motion or Filing Fee

The Court hereby **extends Plaintiffs' deadline for prepaying the full filing fee or filing an IFP Motion to August 24, 2017.** The Court advises Plaintiffs that *each Plaintiff* is required to submit a *separate* IFP Motion, along with a certified copy of his trust fund statement for the relevant time period, or pay the full \$400.00 filing fee for this action. **Submissions must be according to the instructions in the below disposition.** Failure to do so will result in the dismissal of that Plaintiff from this action. However, the obligation to pay the filing fee shall survive such dismissal.

Dismissal of Plaintiff Christopher Furr

Plaintiff Christopher Furr has filed a Motion to Withdraw from the Case. (Doc. 4). The Motion to Withdraw shall be **GRANTED.** Plaintiff Christopher Furr shall be terminated as a party to this action. He shall not be obligated to pay a filing fee or receive a “strike” for this action under 28 U.S.C. § 1915(g). His claims are considered dismissed without prejudice, but he must bring a separate action, if he wishes to pursue the claims in the future.

Group Litigation by Multiple Prisoners

Plaintiffs may bring their claims jointly in a single lawsuit if they so desire. However, the Court must caution them regarding the consequences of proceeding in this manner, including their filing fee obligations, and give them the opportunity to withdraw from the case or sever their claims into individual actions.

In *Boriboune v. Berge*, 391 F.3d 852 (7th Cir. 2004), the Seventh Circuit addressed the difficulties in administering group prisoner complaints. District courts are required to accept joint complaints filed by multiple prisoners *if* the criteria of permissive joinder under Federal Rule of Civil Procedure 20 are satisfied. Rule 20 permits plaintiffs to join together in one lawsuit if they assert claims “arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to these persons will arise in the action.” That said, a district court may turn to other civil rules to manage a multi-plaintiff case. If appropriate, claims may be severed pursuant to Rule 20(b), pretrial orders may be issued providing for a logical sequence of decisions pursuant to Rule 16, parties improperly joined may be dropped pursuant to Rule 21 and separate trials may be ordered pursuant to Rule 42(b). *Boriboune*, 391 F.3d at 854.

Additionally, in reconciling the Prisoner Litigation Reform Act with Rule 20, the Seventh Circuit determined that joint litigation does not relieve any prisoner of the duties imposed upon him under the Act, including the duty to pay the full amount of the filing fees, either in installments or in full if the circumstances require it. *Id.* In other words, each prisoner in a joint action is required to pay a full civil filing fee, just as if he had filed the suit individually.

The Court noted that there are at least two other reasons a prisoner may wish to avoid group litigation. First, group litigation creates countervailing costs. Each submission to the

Court must be served on every other plaintiff and the opposing parties pursuant to Federal Rule of Civil Procedure 5. This means that if there are 2 plaintiffs, the plaintiffs' postage and copying costs of filing motions, briefs or other papers in the case will be double what it would be if there was a single plaintiff.

Second, a prisoner litigating on his own behalf takes the risk that "one or more of his claims may be deemed sanctionable under Federal Rule of Civil Procedure 11." *Boriboune*, 391 F.3d at 854-55. A prisoner litigating jointly assumes those risks for all of the claims in the group complaint, whether or not they concern him personally. Furthermore, if the Court finds that the Complaint contains unrelated claims against unrelated defendants, those unrelated claims may be severed into one or more new cases. If that severance of claims occurs, the plaintiffs will be liable for another full filing fee for each new case. *See George v. Smith*, 507 F.3d 605 (7th Cir. 2007). The Seventh Circuit in *Owens v. Godinez*, 860 F.3d 434 (7th Cir. 2017), recently issued strong encouragement to district courts to enforce the directive of *George*. Plaintiffs may wish to take into account this ruling in determining whether to assume the risks of group litigation in the federal courts of the Seventh Circuit.

Because not every prisoner is likely to be aware of the potential negative consequences of joining group litigation in federal courts, the Circuit suggested in *Boriboune* that district courts alert prisoners to the individual payment requirement, as well as the other risks prisoner pro se litigants face in joint pro se litigation, and "give them an opportunity to drop out." *Id.* at 856. Therefore, in keeping with this suggestion, the Court offers all Plaintiffs, other than Plaintiff Pippins, whom it designates as the "lead" Plaintiff in this case,¹ an opportunity to withdraw from this litigation before the case progresses further. Each Plaintiff may wish to take into

¹ Plaintiff Pippins is designated as the "lead" Plaintiff in this case because, to date, he is the only individual to have filed a motion for leave to proceed *in forma pauperis*.

consideration the following points in making his decision::

- He will be held legally responsible for knowing precisely what is being filed in the case on his behalf.
- He will be subject to sanctions under Federal Rule of Civil Procedure 11 if such sanctions are found warranted in any aspect of the case.
- He will incur a strike if the action is dismissed as frivolous or malicious or for failure to state a claim upon which relief may be granted.
- In screening the complaint, the Court will consider whether unrelated claims should be severed and, if it decides severance is appropriate, he will be required to prosecute his claims in a separate action and pay a separate filing fee for each new action.
- Whether the action is dismissed, severed, or allowed to proceed as a group complaint, he will be required to pay a full filing fee, either in installments or in full, depending on whether he qualifies for indigent status under §§ 1915(b) or (g).²

In addition, if Plaintiffs desire to continue this litigation as a group, any proposed amended complaint, motion or other document filed on behalf of multiple plaintiffs must be signed by each of the Plaintiffs. As long as Plaintiffs appear without counsel in this action, each Plaintiff must sign all documents for himself. *See Lewis v. Lenc-Smith Mfg. Co.*, 784 F.2d 829, 831 (7th Cir. 1986); FED. R. CIV. P. 11.³ A non-attorney cannot file or sign papers for another litigant. Plaintiffs are **WARNED** that future group motions or pleadings that do not comply with this requirement shall be stricken pursuant to Rule 11(a).

² Effective May 1, 2013, the filing fee for a civil case was increased to \$400.00, by the addition of a new \$50.00 administrative fee for filing a civil action, suit, or proceeding in a district court. See Judicial Conference Schedule of Fees - District Court Miscellaneous Fee Schedule, 28 U.S.C. § 1914, No. 14. A litigant who is granted IFP status, however, is exempt from paying the new \$50.00 fee and must pay a total fee of \$350.00.

³ Rule 11 states, in pertinent part: "Every pleading, written motion, and other paper must be signed . . . by a party personally if the party is unrepresented." FED. R. CIV. P. 11(a). Moreover, a prisoner bringing a *pro se* action cannot represent a class of plaintiffs. *See Oxendine v. Williams*, 509 F.2d 1405, 1407 (4th Cir. 1975) (holding it would be plain error to permit imprisoned *pro se* litigant to represent his fellow inmates in a class action).

Disposition

IT IS HEREBY ORDERED that Plaintiff **FURR'S** Motion to Withdraw (Doc. 4) is **GRANTED**. The Court **DIRECTS** the Clerk of the Court to terminate **FURR** as a party to this action. **FURR** shall not be obligated to pay a filing fee or receive a "strike" for this action under 28 U.S.C. § 1915(g). His claims are considered dismissed without prejudice, but he must bring a separate action, if he wishes to pursue the claims in the future.

IT IS ALSO ORDERED that each named Plaintiff (other than **PIPPIN**) shall advise the Court in writing **on or before August 24, 2017**, whether he wishes to continue as a Plaintiff in this group action. If, by that deadline, any non-lead Plaintiff advises the Court that he does *not* wish to participate in the action, he will be dismissed from the lawsuit and will *not* be charged a filing fee for this action.⁴ **This is the *only* way to avoid the obligation to pay a filing fee for this action.**

IT IS ALSO ORDERED that if any Plaintiff wants to pursue his claims individually in a separate lawsuit, he shall so advise the Court in writing, and his claims shall be severed into a new action where a filing fee *will* be assessed.

IT IS FURTHER ORDERED that each Plaintiff who chooses to continue as a Plaintiff, either in this action or in a severed individual case, is hereby **ORDERED** to pay his filing fee of \$400.00 or file a *separate* properly completed IFP Motion **on or before August 24, 2017**. When a Plaintiff files an IFP Motion, the Court must review that Plaintiff's trust fund account statement for the six month period immediately preceding the filing of this action. Thus, Plaintiff must have the Trust Fund Officer at his facility complete the attached certification and provide a copy

⁴ As the lead Plaintiff, Pippin may choose to voluntarily dismiss or sever his claims, but may not escape his obligation to pay the filing fee for this action, which was incurred when the action was filed. See 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467-68 (7th Cir. 1998).

of his trust fund account statement (or institutional equivalent) for the period 1/1/2017 through 7/5/2017. This information should be mailed to the Clerk of Court at the following address: United States District Court – Southern District of Illinois, 750 Missouri Avenue, East St. Louis, Illinois 62201.

Failure to submit a properly completed IFP Motion does *not* relieve that Plaintiff of the obligation to pay a filing fee, unless he also submits timely written notice that he does not intend to proceed with the action. **Any Plaintiff who simply does not respond to this Order on or before August 24, 2017, will be obligated to pay the full filing fee and will also be dismissed from this action for want of prosecution and/or for failure to comply with a court order under Federal Rule of Civil Procedure 41(b).**

In addition, Plaintiffs are again **WARNED** that group motions or pleadings that do not comply with the group pleading requirements discussed herein shall be stricken pursuant to Rule 11(a).

The Clerk is **DIRECTED** to send a copy of this order to each of the named Plaintiffs, and to enclose a blank form IFP Motion and trust fund account certification form for each Plaintiff.

Plaintiffs are **ADVISED** that the Complaint is currently awaiting preliminary review by the Court pursuant to 28 U.S.C. § 1915A, and it has not yet been served on Defendants. Further action by Plaintiffs is required before the Court can complete its preliminary review of this matter under 28 U.S.C. § 1915A. When this review is completed, a copy of the Court's order will be forwarded to each Plaintiff who remains in the action.

Plaintiffs are further **ADVISED** that each of them is under a continuing obligation to keep the Clerk of Court and each opposing party informed of any change in his address;

the Court will not independently investigate a Plaintiff's whereabouts. This shall be done in writing and not later than **7 days** after a transfer or other change in address occurs. Failure to comply with this order will cause a delay in the transmission of court documents and may result in dismissal of this action for want of prosecution. *See* FED. R. CIV. P. 41(b).

IT IS SO ORDERED.

DATED: July 25, 2017

s/J. Phil Gilbert
United States District Judge