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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JOHN RUSH,
Plaintiff,
vs.
R. MOODY,
Defendant.

3:11-cv-00737-LRH-WGC

ORDER

This *pro se* prisoner civil rights case by a Nevada state inmate comes before the Court on plaintiff’s application (#1) to proceed *in forma pauperis* and for initial review. The Court finds that plaintiff is unable to pay a substantial initial partial filing fee toward the full filing fee pursuant to 28 U.S.C. § 1915(b)(1). The application to proceed *in forma pauperis* therefore will be granted, subject to the remaining provisions of this order. The Court thus proceeds to initial review.

Plaintiff presented the Clerk with two sets of initiating papers, each accompanied by a separate application to proceed *in forma pauperis*. The Court has reviewed the writing on each pauper application and also the computer-generated time notation on each of the attached inmate account statements, and it is clear that plaintiff presented the Clerk with two different pauper applications.

In No. 3:11-cv-00736-LRH-VPC, plaintiff presented a pauper application along with a civil rights complaint against defendant Moody alleging that Correctional Officer Moody “assaulted” or battered plaintiff on or about July 31, 2011. Plaintiff seeks monetary damages and injunctive relief.

In the present action, No. 3:11-cv-00737-LRH-WGC, plaintiff presented a – different – pauper application along with a motion for assault charges to be filed against Moody. The motion is not

1 accompanied by a complaint but instead is presented with the second pauper application. Plaintiff
2 included a cover letter indicating that a prior action, No. 3:11-cv-00663-ECR-WGC, had been dismissed
3 without prejudice because plaintiff did not include a pauper application. Plaintiff then writes:

4
5 . . . This motion was to be separate from the civil rights
6 complaint but same case. Would there be a different case no? Or same
7 case No. But different complaints? Please let me know.
8 #1-3, at 2.

9 Neither the Clerk nor this Court can provide plaintiff legal advice as to how to present a filing
10 or filings. If plaintiff presents two sets of papers with two different pauper applications, the Clerk is
11 required to docket each set of papers as a separate action. The Clerk does not have the discretion to
12 decline to file the papers as presented; and the Clerk, again, may not advise plaintiff as to how to
13 proceed before docketing the papers, as presented by plaintiff, as two separate actions.

14 The papers submitted in this action are subject to multiple defects.

15 Plaintiff must initiate an action with a pleading. He may not file a stand-alone motion in an
16 action that has not been commenced by the filing of a proper pleading on the required form.

17 Further, if plaintiff files two currently-pending civil actions arising out of substantially the same
18 circumstances, the later-filed action will be dismissed in favor of the first-filed action.

19 Finally, plaintiff may not obtain an order from a federal court directing either state or federal
20 prosecutorial authorities to initiate a criminal prosecution against an individual.¹

21 IT THEREFORE IS ORDERED that the application (#1) to proceed *in forma pauperis* is
22 GRANTED. Plaintiff shall not be required to pay an initial partial filing fee. However, even if the
23 action is dismissed, plaintiff still must pay the full filing fee pursuant to 28 U.S.C. § 1915(b)(2).

24 IT FURTHER IS ORDERED that the movant herein is permitted to maintain this action to a
25 conclusion without the necessity of prepayment of any additional fees or costs or the giving of security
26 therefor. This order granting *forma pauperis* status shall not extend to the issuance of subpoenas at
27 government expense.

28 ¹ The Court would note that no state or federal prosecutorial officer even is named as a responding party in this
action.

1 IT FURTHER IS ORDERED that, pursuant to 28 U.S.C. § 1915(b)(2), the Nevada Department
2 of Corrections shall pay to the Clerk of the United States District Court, District of Nevada, 20% of the
3 preceding month's deposits to plaintiff's account (in the months that the account exceeds \$10.00) until
4 the full \$350.00 filing fee has been paid for this action. **The Clerk of the Court shall send a copy of**
5 **this order to the Finance Division of the Clerk's Office. The Clerk shall also send a copy of this**
6 **order to the attention of the Chief of Inmate Services for the Nevada Department of Corrections,**
7 **P.O. Box 7011, Carson City, NV 89702.**

8 IT FURTHER IS ORDERED that the Clerk of Court shall file the motion and accompany papers
9 and that this action shall be DISMISSED without prejudice.

10 The Clerk of Court shall enter final judgment accordingly, dismissing this action without
11 prejudice.

12 DATED this 14th day of October, 2011.



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16 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE

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