

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

MICHAEL GEORGE VALDEZ,

Plaintiff,

v.

Civ. No. 23-423 GJF

POLICE DEPARTMENT and FNU LNUs,

Defendants.

**MEMORANDUM OPINION AND ORDER FOR
AMENDED COMPLAINT AND TO CURE DEFICIENCY**

Plaintiff, who is proceeding *pro se*, submitted a one-page letter which the Clerk's Office filed as a "Complaint." *See* Doc. 1, filed May 15, 2023. Plaintiff alleges that unnamed police officers with an unnamed Police Department used excessive force when they arrested him. Plaintiff states he wants to proceed with a lawsuit against the Police Department and its police officers, and he asks: "What steps do I need to follow and what help can you offer?"

I. THE COMPLAINT

The Complaint should be dismissed for failure to state a claim upon which relief can be granted. "[T]o state a claim in federal court, a complaint must explain what each defendant did to him or her; when the defendant did it; how the defendant's action harmed him or her; and, what specific legal right the plaintiff believes the defendant violated." *Nasious v. Two Unknown B.I.C.E. Agents, at Arapahoe Cnty. J. Ctr.*, 492 F.3d 1158, 1163 (10th Cir. 2007). Although the Complaint contains general allegations that the police officers wrongfully arrested Plaintiff and used excessive force, the Complaint fails to state a claim against the unknown officers because it does not allege factual allegations indicating what each officer did to Plaintiff and when they did it. The Complaint also fails to state a claim against the Police Department because the Police

Department is not a separate suable entity. “Generally, governmental sub-units are not separate suable entities that may be sued under § 1983.” *Hinton v. Dennis*, 362 F. App’x 904, 907 (10th Cir. 2010) (citing *Martinez v. Winner*, 771 F.2d 424, 444 (10th Cir. 1985)) (holding that City and County of Denver would remain as a defendant and dismissing complaint as to the City of Denver Police Department because it is not a separate suable entity).

Although the Complaint should be dismissed for failure to state a claim, the Court will provide Plaintiff an opportunity to file an amended complaint.

II. ORDER TO CURE DEFICIENCY

Plaintiff has not paid the \$402.00 fee¹ for instituting a civil action or filed an “Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form)” (“Long Form Application”). Plaintiff shall have **twenty-one (21)** days from the date of this Order being entered to either pay the \$402.00 fee or file a Long Form Application. Any papers that Plaintiff files in response to this Order must include the case number (“Civ. No. 23-423 GJF”).

III. CASE MANAGEMENT

Pro se litigants are litigants are parties who are not represented by a licensed attorney and are representing themselves.

Generally, *pro se* litigants are held to the same standards of professional responsibility as trained attorneys. It is a *pro se* litigant’s responsibility to become familiar with and to comply with the *Federal Rules of Civil Procedure* and the *Local Rules of the United States District Court for the District of New Mexico* (the “Local Rules”).

Guide for Pro Se Litigants at 4, United States District Court, District of New Mexico (October 2022). Plaintiff can find the Local Rules, the Guide for Pro Se Litigants and a link to the Federal Rules of Civil Procedure on the Court’s website, <http://www.nmd.uscourts.gov>. The Guide for

¹ The fee for instituting any civil action, suit or proceeding is comprised of a \$350.00 filing fee, *see* 28 U.S.C. §1914, and a \$52.00 administrative fee.

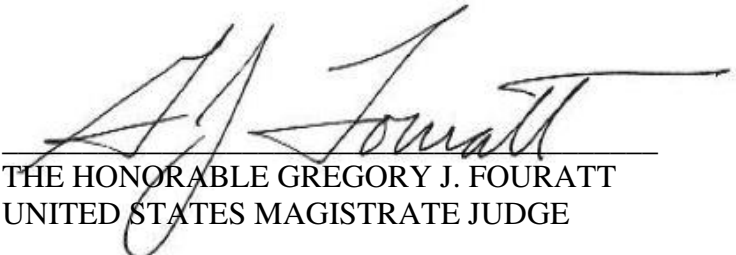
Pro Se Litigants provides *pro se* litigants with general information about filing and participating in a civil action in federal court. Plaintiff is advised that Court staff **cannot** give legal advice.

IV. CONCLUSION

IT IS THEREFORE ORDERED that:

- (1) Plaintiff shall, within twenty-one (21) days of entry of this Order, either pay the \$402.00 fee or file an “Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form).” Failure to timely pay the fee or file a Long Form Application may result in dismissal of this case.
- (2) The Clerk shall send to Plaintiff, together with a copy of this Order, an “Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form).”
- (3) Plaintiff shall, within 21 days of entry of this Order, file an amended complaint. Failure to timely file an amended complaint may result in dismissal of this case.

SO ORDERED.



THE HONORABLE GREGORY J. FOURATT
UNITED STATES MAGISTRATE JUDGE