

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

THOMAS R. MILLER,	)	
Plaintiff,	)	
	)	
v.	)	C.A. No.: 13C-03-035 FSS
	)	<b>(E-FILED &amp; U.S. MAIL)</b>
DEPARTMENT OF CORRECTION,	)	
et al.,	)	
Defendants.	)	

**ORDER**

1. Plaintiff, an inmate serving a life sentence, filed this civil action against his jailers on March 4, 2013. Basically, Plaintiff complains that he has been mis-classified, defamed, and so on.

2. Defendant also filed a motion to proceed *in forma pauperis*.

3. After reviewing the complaint and motion preliminarily, the court, *sua sponte*, dismissed some of Plaintiff's claims because they were legally frivolous. For example, Plaintiff asked for injunctive relief, which is not within this court's jurisdiction. The court also dismissed part of the complaint because it was factually frivolous. For example, Plaintiff failed to plead facts supporting an award of damages for "defamation."

4. The court, however, did not entirely dismiss the complaint. The court granted *in forma pauperis* status and directed that service of process issue, without prejudice to Defendants' filing dispositive motions.

5. On April 3, 2013, Defendants filed a motion to revoke *in forma pauperis* status. Defendants' motion relies on 10 *Del. C.* § 8804(f), prohibiting an inmate from filing complaints *in forma pauperis* where the inmate has:

on 3 or more prior occasions, while incarcerated or detained . . . , brought an action or an appeal . . . in federal court or constitutional or statutory court of the State that was dismissed on the grounds that it was frivolous, malicious or failed to state a claim upon which relief may be granted. . . .

6. Without leave, Plaintiff filed a "Motion to Respond . . ." on April 11, 2013. Plaintiff claims that some of the actions on which Defendants rely were not *in forma pauperis* or some of the filing fee was waived. The court assumes without deciding that only *in forma pauperis* filings count for 10 *Del. C.* § 8804(f)'s purposes. Based on the statutory language and the statute's purpose, that is a highly dubious assumption.

7. In February 2005, Plaintiff filed *Miller v. Adkins*, a retaliatory lawsuit aimed at a prosecutor.<sup>1</sup> After his review, the Chancellor directed the register

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<sup>1</sup> *Miller v. Adkins*, Del. Ch., C.A. No. 1169-CC.

in chancery to docket the complaint, “without payment of the requested filing fees.” The complaint, however, was deemed “frivolous on its face.”<sup>2</sup> That satisfies 10 *Del. C.* § 8804(f)’s dismissal language.

8. On February 27, 2006, Plaintiff filed an action against his jailer.<sup>3</sup> Plaintiff asked for and was granted *in forma pauperis* status on March 2, 2006. The complaint, however, was dismissed at the same time, with the court finding it “legally frivolous.” That also counts for 10 *Del. C.* § 8804(f)’s purposes.

9. On March 20, 2013, the Supreme Court of Delaware summarily affirmed the denial of Plaintiff’s petition for writ of habeas corpus.<sup>4</sup> The Supreme Court held, “it is manifest on the face of [Miller’s] opening brief that the appeal is without merit.” The docket shows, on January 14, 2013, Defendant was granted *in forma pauperis* status to the extent of the docketing deposit. That appeal, without merit on its face, also counts for 10 *Del. C.* § 8804 (f)’s purposes.

10. Accordingly, counting the 2005 case in the Court of Chancery, the 2006 case in this court, and the 2013 appeal to the Delaware Supreme Court, fees have been waived in three, frivolous cases filed by Defendant.

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<sup>2</sup> *Miller v. Adkins*, Del. Ch., C.A. No. 1169-CC, Chandler, C. (Mar. 8, 2005) (LETTER ORDER).

<sup>3</sup> *Miller v. Carroll*, Del. Super., C.A. No. 06M-02-082.

<sup>4</sup> *Miller v. State*, 2013 WL 1187409 (Del. Mar. 20, 2013) (TABLE).

11. In addition to the failed proceedings outlined above, it appears that before any of them, Plaintiff also filed a retaliatory suit in Federal District Court on May 17, 2004.<sup>5</sup> The federal court refused to grant *in forma pauperis* status because it found, on June 1, 2004, that Plaintiff had already “filed at least three actions that were dismissed as frivolous . . . and Plaintiff does not claim to be in imminent danger.” The federal case was closed on August 2, 2004. It does not appear that Plaintiff took an appeal from that dismissal and, therefore, the federal court’s finding against Plaintiff, on its own, establishes the prerequisite facts justifying denial of *in forma pauperis* status here.

12. In passing, the court observes that Defendants did a poor job of making the record justifying denial of *in forma pauperis* status under 10 *Del. C.* § 8804(f), putting the court to unnecessary bother. Nevertheless, when the dockets and terminal orders are reviewed, it appears that Defendants are correct and Plaintiff is not entitled to *in forma pauperis* status.

13. Finally, the court observes that the complaint here barely survived dismissal in its entirety. Mostly, as mentioned above, it appears that Plaintiff is using a civil complaint for damages as a backdoor way to challenge a Department of Correction classification decision. In other words, requiring Plaintiff to pay the filing

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<sup>5</sup> *Miller v. Beauregard*, U.S. Dist. Ct., D.Del., C.A. No. 1:04-cv-00315-GMS.

fee before this case goes forward seems reasonable. In any event, whether this complaint is viable or not, Plaintiff has received as much judicial consideration at taxpayers' expense as he is entitled to.

For the foregoing reasons, Defendant's motion to revoke *in forma pauperis* status is **GRANTED**. This case is **DISMISSED** without prejudice to Plaintiff's refiling it and paying the required fees within the applicable statute of limitations.

**IT IS SO ORDERED.**

Date: May 1, 2013

/s/ Fred S. Silverman  
Judge

oc: Prothonotary (Criminal)  
pc: Ryan P. Connell, Deputy Attorney General  
Thomas R. Miller, Plaintiff (via U.S. Mail)