



enjoined Mr. Jones from filing future claims without leave of court and also required that any such claims be accompanied by an affidavit certifying that:

- (1) The claims sought to be litigated have never been raised or disposed of before in any court;
- (2) The facts alleged are true and correct;
- (3) The affiant has made a diligent and good faith effort to determine what relevant case law controls the legal issues raised;
- (4) The affiant has no reason to believe the claims are foreclosed by controlled law; and
- (5) The affiant understands that the affidavit is made under penalty of perjury.

Mr. Jones submitted the complaint in the instant action on July 21, 2017. Because Mr. Jones had filed the complaint prior to the Court's August 9, 2017 order in *Jones v. Dover Behavioral Health Systems*, the Court, by order dated August 14, 2017, allowed Mr. Jones to provide the required affidavit in this case by August 31, 2017. Mr. Jones filed the affidavit on August 30, 2017.

Mr. Jones's affidavit in support of his motion to proceed *in forma pauperis* in *Jones v. Dover Behavioral Health Systems* alleged that he had no income of any kind during the twelve months prior to June 6, 2017. Mr. Jones filed his motion to proceed *in forma pauperis* in this matter on July 19, 2017, and alleges now that he received approximately \$1,200 monthly in regular income during the past twelve months. Due to Mr. Jones's prior false certifications to this Court regarding his income and the fact, of which the Court takes judicial notice, that his current representations regarding his income place well above the national poverty line,<sup>2</sup>

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<sup>2</sup> Mr. Jones's yearly income is approximately \$14,400. The national poverty threshold is \$12,060 for an individual with no dependents. See <https://www.gpo.gov/fdsys/pkg/FR-2017-01-31/pdf/2017-02076.pdf>

Mr. Jones has not established to the Court's satisfaction that he is indigent, or otherwise unable to pay the costs associated with this action. The Court shall now consider the complaint to determine whether it is frivolous or malicious as well as whether the certifications Mr. Jones made concerning the complaint are true.<sup>3</sup>

According to 10 *Del. C.* § 8801(7), a claim is legally frivolous when it is "based on an indisputably meritless legal theory." This Court is instructed to dismiss a complaint where "even a *pro se* litigant, acting with due diligence, should have found well settled law disposing of the issue(s) raised."<sup>4</sup>

Mr. Jones's complaint alleges that in December of 2015, Dr. Catherine Wright (hereinafter "Dr. Wright") performed surgery on his nose at Milford Memorial Hospital, Bayhealth, in Dover, Delaware. He claims that Dr. Wright botched the surgery: "Dr. Wright cut out all of the flesh on my nose, leaving me only with skin that covers the bone structure." Mr. Jones also included exhibits by appending URL links to pictures of himself that he has uploaded to Facebook. The photographs reveal no visible deformity. Mr. Jones alleges various damages resulting from the surgery, including rendering him "more susceptible to be picked on . . . less desirable to women, my peers, and potential business partners," and putting him at risk of further injury and death. Mr. Jones seeks "Two Billion United States Dollars" in relief.

Mr. Jones has cited various inapplicable legal authorities, bespeaking a clear lack of diligence or good faith. In support of his claim, Mr. Jones cites the Fourth and Eighth Amendments, various sections of Title 18 of the United States Code, 42 U.S.C. § 1983, three United States Supreme Court cases to be addressed further below, the Pledge of Allegiance, and the Hippocratic oath.

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<sup>3</sup> 10 *Del. C.* § 8803(b).

<sup>4</sup> 10 *Del. C.* § 8803(b).

Turning first to the Fourth and Eighth Amendments, these Amendments protect the people against the actions of the State and Federal governments, not private actors.<sup>5</sup> The Court takes judicial notice that Dr. Wright is a private actor and is employed by a private hospital—in short, she is not a state actor.<sup>6</sup> Nor, indeed, does Mr. Jones claim to the contrary.

With regard to the citations to Title 18 of the United States Code, those statutes do not provide a private right of action, and therefore may not be invoked by Mr. Jones as entitling him to relief.<sup>7</sup> Further, the subjects addressed in several of these citations bear no rational relationship to the facts alleged in the complaint.<sup>8</sup>

Concerning 42 U.S.C. § 1983, this section provides a private right of action only if a citizen’s “federal constitutional or statutory rights [are] violated by a state actor.”<sup>9</sup> As indicated above, Dr. Wright is not a state actor.

The cases cited also appear totally inapplicable to the facts at hand, and no explanation for why they are cited is given. The first case, *Clinton v. Jones*,<sup>10</sup> is a case dealing with balance of powers issues, which certainly are not present here.

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<sup>5</sup> See e.g., *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 196 (1989) (stating that the Fourteenth Amendment’s “purpose was to protect the people from the State, not to ensure that the State protected them from each other”); *Minneci v. Pollard*, 565 U.S. 118, 125 (2012) (disallowing Eighth Amendment claim against private defendant, because “in the case of a privately employed defendant, state tort law provides an “alternative, existing process” capable of protecting the constitutional interests at stake).

<sup>6</sup> See <https://www.bayhealth.org/wright-catherine-a-md> (Sept. 14, 2017); <https://www.bayhealth.org/about-us> (Sept. 14, 2017).

<sup>7</sup> See e.g., *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973).

<sup>8</sup> For example, in support of his claim that Dr. Wright unlawfully damaged his nose, Mr. Jones claims entitlement to relief under 18 U.S.C. § 2071, which statute is titled “concealment, removal, or mutilation generally.” However, the statute is not concerned with unlawful mutilation of a person, but is concerned with the destruction of public records, proceedings, maps, books, or other documents. Even a minimally diligent reading of the statute would have revealed that this statute does not control the legal issues raised.

<sup>9</sup> *Thomas v. Bd. of Educ. of the Brandywine Sch. Dist.*, 2010 WL 5514367 (D. Del. 2010); *Lovett v. Pietlock*, 2011 WL 2086642, at \*2 (Del. Super. Ct. Apr. 26, 2011), *aff'd*, 32 A.3d 988 (Del. 2011).

<sup>10</sup> 520 U.S. 681 (1997).

The *Slaughter-House Cases*<sup>11</sup> considered Fourteenth Amendment issues, which, as stated above, are also inapplicable. Finally, *Monell v. New York City Dept. of Social Services*<sup>12</sup> is a case concerning municipal liability, and Dr. Wright is a private actor.

The Court finds that all of Mr. Jones's cited legal authority pertains to criminal offenses or individual protections against government abuses, neither of which are remotely indicated on the complaint. The Court declines to address the legal significance of the Pledge of Allegiance or the Hippocratic oath.

The Court finds that Mr. Jones's claim is legally frivolous. Mr. Jones has not cited a single case or authority demonstrating his entitlement to relief. To the Court's understanding, Mr. Jones's theory is that Dr. Wright has committed certain criminal acts and that Mr. Jones's Constitutional rights have somehow been violated. This theory is indisputably meritless—it does not entitle him to any relief this Court can grant, and certainly does not justify a claim for “Two Billion United States Dollars” in damages.<sup>13</sup>

The above analysis also serves to show that Mr. Jones cannot have made a diligent and good faith effort to determine what relevant case law controls the legal issues raised, and thus has not complied with the injunction imposed upon him by this Court's August 14, 2017 Order.

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<sup>11</sup> 83 U.S. 36 (1872).

<sup>12</sup> 436 U.S. 658 (1978).

<sup>13</sup> See *Cannon v. McCreanor*, 2003 WL 943247, at \*2 (Del. Super. Mar. 6, 2003) (dismissing complaint as legally frivolous where plaintiff alleged “that the defendant did not allow him to enter the ‘chowhall’ and receive a food tray,” sought “compensatory damages in the amount of \$2,500.00 and punitive damages in an equal amount,” and provided “no justification or facts supporting his damage claims.”).

Consequently, pursuant to this Court's order, Mr. Jones's motion to proceed *in forma pauperis* is **DENIED**, and the complaint is **DISMISSED** with prejudice as legally frivolous.

**IT IS SO ORDERED** this 26th Day of September, 2017.

/s/ Noel Eason Primos

JUDGE

NEP/wjs

*Via File&ServeXpress/U.S. Mail*

oc: Prothonotary

xc: Matthew Jones

file