

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

THOR JAMES WILLIAMSON,

Plaintiff,

vs.

EARL HOUSER, *et al.*,

Defendants.

Case No. 3:14-cv-00219-SLG

**ORDER PERMITTING THIRD AMENDED COMPLAINT
SOLELY ON COURT FORM**

Thor James Williamson, a self-represented state prisoner, has filed a Second Amended Complaint (SAC) as permitted by the Court's Order at Docket 24.¹ In his SAC, Mr. Williamson asserts violations of his Due Process rights against each of the Defendants, state officials at Palmer Correctional Center (PCC), in their individual capacities for money damages.²

In its earlier Order Permitting Amended Complaint, at Docket 21, the Court explained the requirements for stating a claim for relief for violations that may have occurred as a result of the acts of various state officials in Mr. Williamson's case.³ The possible claims explained by the Court, after reviewing the facts alleged by

¹ Dockets 25, 26-1 (missing page to the SAC, which will be construed as an errata to the SAC).

² Docket 25 at 2-3.

³ Docket 21.

Mr. Williamson, included the denial of the right of access to the courts,⁴ the violation of the right to Due Process,⁵ and retaliation for the exercise of his First Amendment rights.⁶ The Court also explained that to obtain money damages from an individual defendant, Mr. Williamson must assert facts showing that that individual defendant participated in causing his alleged injuries.⁷

Again, because Mr. Williamson is a prisoner, the Court is required to “identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—

(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

(2) seeks monetary relief from a defendant who is immune from such relief.”⁸

⁴ *Id.* at 4-6.

⁵ *Id.* at 6-7.

⁶ *Id.* at 8.

⁷ *Id.* at 8-10.

⁸ 28 U.S.C. § 1915A(b); see also 28 U.S.C. § 1915(e)(2)(B) (required review of in forma pauperis complaints); 42 U.S.C. § 1997e(c)(1) (“The court shall on its own motion . . . dismiss any action brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner . . . if the court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief.”); see also *Hebbe v. Plier*, 627 F.3d 338, 342 (9th Cir. 2010) (“[O]ur ‘obligation’ remains [after *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)], ‘where the petitioner is *pro se*, particularly in civil rights cases, to construe the pleadings liberally and to afford the petitioner the benefit of any doubt.”) (citation omitted).

1. Mr. Williamson has failed to state a claim for relief for the violation of his right to Due Process.

The Supreme Court has explained that “the Due Process Clause provides that certain substantive rights—life, liberty, and property—cannot be deprived except pursuant to constitutionally adequate procedures. . . [O]nce it is determined that the Due Process Clause applies, ‘the question remains what process is due.’”⁹ Further, Mr. Williamson must show that any denial of his right to Due Process resulted in an injury in fact.¹⁰

In his first claim for relief, against Earl Houser, the Assistant Superintendent of PCC, Mr. Williamson alleges as follows:

After being placed in segregation denied and deprived access to my current civil legal documents from the courts for 49 days. by knowing his officers seized court documentation until disciplinary action could be imposed before D-Board and all segregation time completed. After stating “employees of the Department do not deny any ones their rights to Due Process”. After All Earl Houser was one of the officers

⁹ *Cleveland Bd. Of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985) (citations omitted); see also *Turner v. Safely*, 482 U.S. 78, 89 (1987) (“[W]hen a prison regulation impinges on inmates’ constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.”).

¹⁰ See *Witt v. Department of Air Force*, 527 F.3d 806, 812 (9th Cir. 2008) (“Major Witt meets the Article III requirements for her substantive due process and equal protection claims. . . . Major Witt suffered a cognizable injury on account of her long-term suspension.”); *Schmier v. U.S. Court of Appeals for Ninth Circuit*, 279 F.3d 817, 821-22 (9th Cir. 2001) (Attorney failed to state a Due Process claim when he “alleged no facts showing, with specificity, that the prohibition against citing unpublished dispositions will produce an imminent injury personal to Schmier himself . . . or even to one of Schmier’s clients,” nor did “he establish standing based solely on his interest in seeing the federal courts (among other governmental bodies) ‘perform [their] duties’ and abide by the Constitution.”) (citations omitted); *Lee v. State of Oregon*, 107 F.3d 1382, 1390 (9th Cir. 1997) (“None of the Plaintiffs can assert an ‘injury in fact’ resulting from the alleged equal protection, due process, Americans with Disabilities Act, or Rehabilitation Act violations. . . . The failure to assert an ‘injury in fact’ requires the dismissal of these claims.”).

that had placed me in segregation to begin with. My right to “Due Process” were violated by the above named defendant for (49) days while housed in segregation. This conduct is unacceptable and constitutes deliberate indifference. Plaintiff had permission by staff member Paul Kroening to store a box of legal work in his office. And my name and the box had the words (LEGAL COURT DOCUMENTS) written all over it. So, there was no chance of this box of legal documents could be considered abandoned property, or what it was. Or who it belonged to. Or where I was at.¹¹

Mr. Williamson states that he was denied access to his legal documents while he was in segregation for 49 days.¹² He has not specifically stated, however, how his Due Process rights were violated during that process, resulting in an injury. Thus, Mr. Williamson has not stated a claim for relief against Earl Houser for the violation of his right to Due Process.¹³

In his second claim for relief, Mr. Williamson alleges that Robert Hall, a sergeant at PCC, violated his rights as follows:

On 9/19/2014, Plaintiff submitted request for access to his legal documentation regarding Civil Complaint and litigation. Defendant Hall denied me access to my documentation and stated that I’m only allowed to have information pertaining to my criminal case. Defendant Robert Hall continued to deny me access to my Civil case by stating that I will be able to work on it once I was released from segregation. Defendant Hall consistently denies my requests again on Sept 29th 2014. My rights to “Due Process” were violated by Robert Hall for an

¹¹ Docket 25 at 4.

¹² *Id.*

¹³ Mr. Williamson uses the term “deliberate indifference” throughout his pleading. See *id.* at 4-6; Docket 26-1. However, deliberate indifference normally describes cruel and unusual punishment under the Eighth Amendment, particularly in cases addressing the failure to meet a prisoner’s serious medical needs. See *Estelle v. Gamble*, 429 U.S. 97 (1976).

extended period of time. This conduct is unacceptable and constitutes, "deliberate indifference" to my civil rights.¹⁴

Again, alleging that Mr. Williamson was denied access to his legal documents while he was in segregation for 49 days, without more, does not state a claim for relief for the violation of Mr. Williamson's right to Due Process.

In his third claim, against PCC Sergeant Frances Buzby, Mr. Williamson also alleges that his rights were violated as follows:

On 9/2/2014, at approximately 7:00, Frances Buzby was notified about Williamson's box of legal documents being stored in the education department office. Williamson had permission by Staff member Paul Kroening to leave my box of legal work in the office while I was scheduled to leave the facility for day surgery. Defendant Buzby violated Privileged Mail. Defendant Buzby used my Privileged mail and legal documents to issue an incident report stating that some of the paper work was a (Direct threat) to the security to the Institution. Officer Buzby violated confidentiality by breaching the documents contained in my legal material. Further, Defendant Buzby deprived and denied me access to my legal work by seizing the documentation until disciplinary action could be imposed before D-Board. My Right to "Due Process" were violated by the above mentioned defendant for (49) days while housed in segregation, pending and completing disciplinary actions.¹⁵

And in his fourth claim, Mr. Williamson alleges the following against Douglass Shaeffer, a PCC Property Officer:

On 9/19/2014, Plaintiff submitted requests for access to his legal documents regarding Civil Complaint and other litigation. Defendant Shaeffer, denied me access to my documentation. for the 49 days I was in the hole telling me I must get my legal documents from Defendant Hall. This denies my rights to Due Process. And my rights

¹⁴ Docket 25 at 5.

¹⁵ *Id.* at 6.

were violated by Douglas Sheaffer for an extended period of time. This conduct is unacceptable and constitutes, “deliberate indifference.” to my civil rights.¹⁶

Mr. Williamson has not specifically alleged how his Due Process rights were violated, resulting in an injury, by Frances Buzby, Douglas Shaeffer, or any other Defendant.¹⁷

2. Mr. Williamson will be given a final opportunity to proceed with this case.¹⁸

Mr. Williamson may either (1) proceed on his First Amended Complaint at Docket 22, without the attachments, and with an errata providing the full names of the three remaining Defendants in the caption (as explained in the Order Permitting

¹⁶ Docket 26-1.

¹⁷ *Compare Antonetti v. Skolnik*, 748 F.Supp.2d 1201, 1210-11 (D. Nev. 2010) (“Plaintiff claims that he has been housed in segregation for *several years*, and has been repeatedly denied materials such as books, paper, pens, and envelopes, as well as assistance from a law clerk and help with research . . . by direct refusal and by policy. . . . [P]laintiff argues that defendants’ failures have prevented him from being properly prepared for court. He claims that as a result, his habeas corpus petitions and civil rights actions have been dismissed . . . The court finds that under the facts alleged by plaintiff . . . he states a colorable First Amendment access to courts claim.”) (emphasis added); and *Giba v. Cook*, 232 F.Supp.2d 1171, 1185 (D. Oregon 2002) (“Giba claims that several defendants denied him the right of access to the courts and that he incurred an actual injury because the ‘confiscated documents eventually culminated in plaintiff having his lawsuit dismissed.’ . . . Giba alleges that he was denied the right of access to the courts because several defendants confiscated and destroyed his photocopies of another inmate’s legal papers. Giba, however, fails to show how this interference actually caused the dismissal of his civil case, let alone to which civil case he is referring. Moreover, Giba should have been able to procure any documents relating to his own case through the discovery process and by requesting affidavits from other inmates to be sent directly to him. Thus, the confiscation and destruction of these papers cannot amount to the denial of court access.”).

¹⁸ See *Silva v. Di Vittorio*, 658 F.3d 1090, 1105 (9th Cir. 2011) (“Dismissal of a pro se complaint without leave to amend is proper only if it is absolutely clear that the deficiencies of the complaint could not be cured by amendment.”).

Second Amended Complaint Solely on Court Form, at Docket 24); or (2) file a Third Amended Complaint solely on the form provided by the Court, with no attachments.

If Mr. Williamson chooses to file a Third Amended Complaint, he should allege facts against *only one defendant for each claim for relief* in the space provided. In Claim 1, for example, Mr. Williamson could state facts solely in support of his allegation that Assistant Superintendent Houser violated his Due Process rights, and how he was injured as a result; in Claim 2, he could state facts solely against Sergeant Robert Hall for the violation of his right to access to the courts, and how he was injured as a result; and so on.

If he chooses to amend, Mr. Williamson must state, specifically, what each state official did or did not do which he believes violated his federal civil rights, and what specific relief he seeks from the Court – whether in the form of damages or injunctive relief. Mr. Williamson must decide, for each defendant, whether he or she is being sued in his or her individual capacity (requesting money damages for *participating in causing his injuries*), or official capacity (requesting injunctive relief to address a *policy or custom that resulted in his injuries*).

The Court is sending a form upon which Mr. Williamson *must file any amended complaint*. In completing this form, Mr. Williamson should state the facts in his own words, as if he were *briefly and concisely* telling someone what happened. The facts provided in support of each separate claim must *specifically* include the name of the *particular defendant*, *what* happened, *how* the particular

defendant was involved, *when* the events occurred, *where* those events occurred, *how* he was *hurt*, and what the *injuries* were. In other words, Mr. Williamson must avoid stating conclusions.¹⁹

Later, if his claims proceed before the Court on the merits, at the discretion of the Court, Mr. Williamson may be given an opportunity to file a brief on the issues in which he may more thoroughly argue the case with supporting documentation.²⁰

A Third Amended Complaint must be complete in itself without reference to any prior pleading.²¹ That is, any defendant not named or claim not re-alleged is generally considered waived.²² Thus, in a Third Amended Complaint, Mr. Williamson should make no reference to his previous complaints or other extraneous documents.

IT IS THEREFORE ORDERED:

1. The Second Amended Complaint, with errata, at Dockets 25 and 26-1, is
DISMISSED without prejudice to filing a Third Amended Complaint.

¹⁹ See *Ashcroft v. Iqbal*, 556 U.S. at 678-79.

²⁰ After the answer(s) have been filed in a case, the Court issues a Scheduling Order that sets out the briefing and pretrial schedule. A brief is a “written statement setting out the legal contentions of a party in litigation . . . consisting of legal and factual arguments and the authorities in support of them.” *Black’s Law Dictionary* (9th ed. 2009).

²¹ See D.Ak.LR 15.1(3).

²² See *Lacey v. Maricopa County*, 693 F.3d 896, 928 (9th Cir. 2012) (“For claims dismissed with prejudice and without leave to amend, we will not require that they be repled in a subsequent amended complaint to preserve them for appeal. But for any claims voluntarily dismissed, we will consider those claims to be waived if not repled.”) (citation omitted).

2. The Motion at Docket 20 is STRICKEN as improper under the Federal Rules of Civil Procedure.²³
3. The Clerk of Court is directed to send form PS01, Prisoner's Complaint under the Civil Rights Act, and a copy of the Court's Orders at Dockets 21 and 24 to Mr. Williamson with this Order.
4. Mr. Williamson may proceed on his First Amended Complaint at Docket 22 (as explained in Docket 24), against the three remaining Defendants, or he may file a Third Amended Complaint on or before **April 16, 2015**. If he files a Third Amended Complaint, he must do so solely on the form provided by the Court, with no attachments. He must state facts against only a single defendant in each claim for relief. He must make no legal arguments.
5. If Mr. Williamson decides to proceed solely on his First Amended Complaint at Docket 22, without attachments, he shall file a notice with the Court on or before **April 16, 2015**. He shall also submit an errata to his First Amended Complaint *on the first page of the Prisoner's Civil Rights Complaint form*

²³ The factual allegations and request for relief addressed in Docket 20 are what should be contained within a complaint.

Fed. R. Civ. P. 8(a) ("A pleading that states a claim for relief must contain:
(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.") (emphasis in original).

provided to him with this Order. On that paper, Mr. Williamson must list all of the *three remaining Defendants* by their full names in the caption, and complete the remainder of the page.²⁴ He shall title that page, “Errata to Amended Complaint at Docket 22,” and return the page to the Clerk of Court on or before **April 16, 2015**.

DATED at Anchorage, Alaska, this 16th day of March, 2015.

/s/ SHARON L. GLEASON
UNITED STATES DISTRICT JUDGE

²⁴ Mr. Williamson properly completed the first page of his Second Amended Complaint at Docket 25, for example. After service of a complaint, future documents may use the name of the first Defendant, and “et al.” in the caption, as demonstrated on the first page of this Order.