

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

LEDELL LEE, ADC # 97101; JASON McGEHEE;
STACEY JOHNSON; BRUCE WARD; MARCEL
WILLIAMS; and KENNETH WILLIAMS

PLAINTIFFS

v.

No. 4:17-cv-194-DPM
No. 4:17-cv-195-DPM
No. 4:17-cv-196-DPM
No. 4:17-cv-197-DPM
No. 4:17-cv-198-DPM
No. 4:17-cv-199-DPM

ASA HUTCHINSON, in his official capacity as
Governor of Arkansas; WENDY KELLEY, in her
official capacity as Director of the Arkansas
Department of Correction; JOHN FELTS, JOHN
BELKEN, ANDY SHOCK, DAWNE BENAFIELD
VANDIVER, JERRY RILEY, ABRAHAM
CARPENTER, JR., and LONA H. McCASTLAIN,
all in their official capacities as Members
of the Arkansas Parole Board

DEFENDANTS

ORDER

1. To handle these related cases more efficiently, the Court consolidates them. Common issues of fact and law predominate. FED. R. CIV. P. 42(a)(2). Case No. 4:17-cv-194-DPM will be the lead case.

2. Plaintiffs' motions to proceed *in forma pauperis*, No. 1 in all six cases, are granted. The Court defers assessment of the filing fee, 28 U.S.C. § 1915(b), and refers those issues to Magistrate Judge Kearney to handle in due course.

Compare Hubbard v. Haley, 262 F.3d 1194, 1196–98 (11th Cir. 2001), and *Hagan v. Rogers*, 570 F.3d 146, 153–56 (3d Cir. 2009), with *Talley-Bey v. Knebl*, 168 F.3d 884, 886–87 (6th Cir. 1999).

3. The Court must screen the complaint before ordering service. 28 U.S.C. § 1915(e)(2). The prisoners' clemency-related claims are not frivolous, and need prompt adjudication. The Clerk has listed the Arkansas Parole Board and the Arkansas Department of Correction as defendants. But the complaint doesn't clearly name them as parties; and neither the Board nor the ADC is a person subject to suit under § 1983. *Brown v. Missouri Department of Corrections*, 353 F.3d 1038, 1041 (8th Cir. 2004). The Court therefore directs the Clerk to eliminate the Board and the ADC as defendants. Because only injunctive relief is sought, Governor Hutchinson, Director Kelley, and the Board members are not immune in their official capacities. The case will proceed against them.

4. The Court directs the Clerk to issue summonses and forward them to plaintiffs' counsel to serve the complaint on the remaining defendants. Counsel should make service of process, and file proof thereof, now.

5. The embedded request for expedited consideration, and an evidentiary hearing, is granted. Defendants should respond to the complaint and the motion as soon as practicable – and no later than noon on Monday, 3 April 2017. The Court will hold the hearing on Tuesday, 4 April 2017, starting at 10:00 a.m. in courtroom 2A. By the close of business Monday, counsel should exchange exhibits, exhibit lists, and witness lists (with copies to the Court).

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

30 March 2017