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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WAYNE GORDON, aka DWAYNE HAYES, No. C-09-1849 TEH (PR)

Plaintiff,

v.

ORDER OF SERVICE

GREGORY AHERN, et. al.,

Defendant(s).

_____ /

Plaintiff, a pretrial detainee housed at the Santa Rita Jail (Alameda County) in Dublin, California, has filed a pro se civil rights Complaint under 42 U.S.C. section 1983 alleging that Alameda County Sheriff's Deputies violated his constitutional rights. Specifically, Plaintiff claims that the Alameda County Jail law library is closed and his requests for legal assistance sent to the county's contracted legal assistance program were denied.

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2 Federal courts must engage in a preliminary screening of
3 cases in which prisoners seek redress from a governmental entity or
4 officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
5 The court must identify cognizable claims or dismiss the complaint,
6 or any portion of the complaint, if the complaint "is frivolous,
7 malicious, or fails to state a claim upon which relief may be
8 granted," or "seeks monetary relief from a defendant who is immune
9 from such relief." Id. § 1915A(b). Pleadings filed by pro se
10 litigants, however, must be liberally construed. Balistreri v.
11 Pacifica Police Dep't., 901 F.2d 696, 699 (9th Cir. 1990).

12 To state a claim under 42 U.S.C. section 1983, a plaintiff
13 must allege two essential elements: (1) that a right secured by the
14 Constitution or laws of the United States was violated, and (2) that
15 the alleged violation was committed by a person acting under the
16 color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

17 Prisoners have a constitutional right of access to the
18 courts. See Lewis v. Casey, 518 U.S. 343, 350 (1996); Bounds v.
19 Smith, 430 U.S. 817, 821 (1977). To state a claim for any violation
20 of the right of access to the courts, a prisoner must allege that
21 there was an inadequacy in the prison's legal access program (e.g.,
22 law library or legal assistant) that caused him an actual injury.
23 See Lewis, 518 U.S. at 350-55. He must allege specific facts
24 showing that the inadequacy in the prison's program hindered his
25 efforts to pursue a non-frivolous claim concerning his conviction or
26 conditions of confinement. See id. at 354-55.

1 Court orders as follows:

2 a. No later than 90 days from the date of this
3 Order, Defendants shall file a Motion for Summary Judgment or other
4 dispositive motion. A Motion for Summary Judgment shall be
5 supported by adequate factual documentation and shall conform in all
6 respects to Federal Rule of Civil Procedure 56, and shall include as
7 exhibits all records and incident reports stemming from the events
8 at issue. If Defendants are of the opinion that this case cannot be
9 resolved by summary judgment or other dispositive motion, they shall
10 so inform the Court prior to the date his motion is due. All papers
11 filed with the Court shall be served promptly on Plaintiff.

12 b. Plaintiff's Opposition to the dispositive motion
13 shall be filed with the Court and served upon Defendants no later
14 than 30 days after Defendants serve Plaintiff with the motion.

15 c. Plaintiff is advised that a Motion for Summary
16 Judgment under Rule 56 of the Federal Rules of Civil Procedure will,
17 if granted, end your case. Rule 56 tells you what you must do in
18 order to oppose a motion for summary judgment. Generally, summary
19 judgment must be granted when there is no genuine issue of material
20 fact - that is, if there is no real dispute about any fact that
21 would affect the result of your case, the party who asked for
22 summary judgment is entitled to judgment as a matter of law, which
23 will end your case. When a party you are suing makes a motion for
24 summary judgment that is properly supported by declarations (or
25 other sworn testimony), you cannot simply rely on what your
26 Complaint says. Instead, you must set out specific facts in

1 declarations, depositions, answers to interrogatories, or
2 authenticated documents, as provided in Rule 56(e), that contradict
3 the facts shown in Defendants' declarations and documents and show
4 that there is a genuine issue of material fact for trial. If you do
5 not submit your own evidence in opposition, summary judgment, if
6 appropriate, may be entered against you. If summary judgment is
7 granted, your case will be dismissed and there will be no trial.
8 Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc) (App
9 A).

10 Plaintiff also is advised that a Motion to Dismiss for
11 failure to exhaust administrative remedies under 42 U.S.C. §
12 1997e(a) will, if granted, end your case, albeit without prejudice.
13 You must "develop a record" and present it in your opposition in
14 order to dispute any "factual record" presented by the Defendants in
15 their Motion to Dismiss. Wyatt v. Terhune, 315 F.3d 1108, 1120 n.14
16 (9th Cir. 2003).

17 d. Defendants shall file a reply brief within 15
18 days of the date on which Plaintiff serves them with the opposition.

19 e. The motion shall be deemed submitted as of the
20 date the reply brief is due. No hearing will be held on the motion
21 unless the Court so orders at a later date.

22 3. Discovery may be taken in accordance with the Federal
23 Rules of Civil Procedure. No further court order is required before
24 the parties may conduct discovery.

25 4. All communications by Plaintiff with the Court must
26 be served on Defendants, or Defendants' counsel once counsel has
27


1 been designated, by mailing a true copy of the document to
2 Defendants or Defendants' counsel.

3 5. It is Plaintiff's responsibility to prosecute this
4 case. Plaintiff must keep the Court and all parties informed of any
5 change of address and must comply with the Court's orders in a
6 timely fashion. Failure to do so may result in the dismissal of
7 this action pursuant to Federal Rule of Civil Procedure 41(b).

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IT IS SO ORDERED.

DATED 07/01/09



THELTON E. HENDERSON
United States District Judge