

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

DONALD JONES,

Plaintiff,

v.

Case No: 2:17-cv-427-FtM-29CM

LEE COUNTY DEPARTMENT OF  
HUMAN AND VETERAN SERVICES,

Defendant.

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**OPINION AND ORDER**

This matter comes before the Court on review of plaintiff's Request on Why the Long Delay (Doc. #16) filed on May 8, 2018, and plaintiff's Motion From the Court to Intervene in This Case (Doc. #17) filed on June 7, 2018. The motions will be granted to the extent that the Amended Complaint is now being reviewed.

In the first motion, plaintiff asks why such a long delay since the February 2, 2018 Order. In the second motion, plaintiff asks the Court to remove the undersigned from the case, and to explain the delay. The review of the Amended Complaint was delayed simply because of other more urgent matters that sometimes take precedence, including criminal matters. The Court does not find that a reassignment of the case would benefit plaintiff, and declines to transfer the case. The Court will take the opportunity to review the Amended Complaint.

Under Rule 1915, when a party seeks to proceed without prepayment of costs or the filing fee,

Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that--

(A) the allegation of poverty is untrue; or

(B) the action or appeal--

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915(e)(2). "Dismissal under § 1915(e)(2)(B)(ii) is governed by the same standard as a dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure. [ ] However, *pro se* pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed." Evans v. Georgia Reg'l Hosp., 850 F.3d 1248, 1253 (11th Cir.), cert. denied, 138 S. Ct. 557 (2017) (citations omitted).

On February 2, 2018, the Magistrate Judge found that plaintiff had demonstrated "sufficient economic eligibility" to proceed without prepayment of the filing fee and costs, but denied the motion because plaintiff had failed to file an amended complaint pursuant to instructions provided in a prior order. (Doc. #12.)

In the previous Order (Doc. #8), the Magistrate Judge reviewed the original Complaint and found no plausible legal claims for relief stated, and no articulated basis for subject-matter jurisdiction. The Magistrate Judge provided plaintiff an opportunity to amend in light of his *pro se* status, consistent with provided directives, and noted that the "[f]ailure to follow the Court's directives may lead to the Court recommending that this case be dismissed." (Doc. #8, p. 10.)

On February 16, 2018, plaintiff filed a one-page Amended Complaint (Doc. #14) against the Lee County Department of Human and Veteran Services, which states in its entirety:

(1) I file application at the lee county department of human and veteran Services for assistance they was rule and offensive and wanted me to Go somewhere else to another program I spoke to the director. At the Next meeting ll repairs was remove. I be leave this was retaliation for calling the commissioner office.

(2) Lee county hire contractors to depreciate my home by damaging my ceilings and trimming. I believe that these malicious acts was in violation of my constutational [sic] right, age discrimination and my race as afo-american.

WHEREFORE, Plaintiff prays that this United State District Court,

(A} Grant the plaintiff a jury trial and monetary award.

(Doc. #14.) The Court notes that the Amended Complaint adds numbered paragraphs in an attempt to comply with Rule 10 of the Federal Rules of Civil Procedure, however the Amended Complaint still fails to comply with Rule 8 because a short and plain statement of why plaintiff is entitled to relief is not provided. First, plaintiff did not incorporate the factual statements from page 3 and 4 of the original complaint so the Court cannot determine the factual basis for why plaintiff is entitled to relief. Second, he did not include a copy of the Charge of Discrimination attached to the original complaint, or a Right to Sue letter, if one was issued, and the Amended Complaint is now the operative pleading and should incorporate everything. "An amended pleading supersedes the former pleading; the original pleading is abandoned by the amendment, and is no longer a part of the pleader's averments against his adversary." Dresdner Bank AG, Dresdner Bank AG in Hamburg v. M/V OLYMPIA VOYAGER, 463 F.3d 1210, 1215 (11th Cir. 2006) (citation omitted).

The Amended Complaint loosely references "discrimination" and the Constitution, but fails to state a claim under any specific law or constitutional provision to support a private cause of action. The Civil Cover Sheet checked off "federal question" for the jurisdictional basis, and marked Americans with Disabilities Act and "Other labor Litigation" as bases for his cause of action

for "discrimination" under the Civil Rights Act of 1964, but plaintiff does not indicate that he has a disability that was the basis of discrimination. (Doc. #1-1.) Without additional information, the Court cannot establish its jurisdiction to hear the case, and it cannot determine a plausible claim.

The Court will provide plaintiff one last opportunity to amend and state a claim. For additional resources and assistance, plaintiff may wish to consult the "Proceeding Without a Lawyer" resources on filing a *pro se* complaint on the Court's website, [http://www.flmd.uscourts.gov/pro\\_se/default.htm](http://www.flmd.uscourts.gov/pro_se/default.htm).<sup>1</sup>

Accordingly, it is hereby

**ORDERED:**

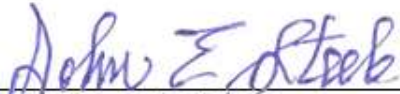
1. Plaintiff's Request on Why the Long Delay (Doc. #16) is **GRANTED** to the extent that the court addressed the motion.
2. Plaintiff's Motion From the Court to Intervene in This Case (Doc. #17) is **GRANTED** to the extent that the Court has reviewed the Amended Complaint.
3. The Amended Complaint is **dismissed without prejudice** with leave to file a Second Amended Complaint within **THIRTY (30) DAYS** of this Order. If the Second Amended Complaint fails

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<sup>1</sup> The website has tips, answers to frequently-asked questions, and sample forms. There is also a link that may help plaintiff generate the second amended complaint.

to articulate a basis for jurisdiction, or if no Second Amended Complaint is filed, the case will be closed without further notice.

**DONE and ORDERED** at Fort Myers, Florida, this 16th day of July, 2018.

  
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JOHN E. STEELE  
SENIOR UNITED STATES DISTRICT JUDGE

Copies:  
Plaintiff