

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

TERRY LEE FREEZE and ERNEST
MIESSEL GRUBB,

Plaintiffs,

v.

Case No.: 2:19-cv-603-FtM-38MRM

DONALD SAWYER, F. BRIAN
LIEBEL, JON PAUL CARNER,
CYNTHIA NOBLETT, C. JONES,
GENNA MARX BRISSON, KRISTIN
KANNER, JEREMY BARR and
CHAD POPPELL,

Defendants.

OPINION AND ORDER¹

Plaintiffs initiated this action by filing a Motion to File Federal Charges Against Defendants ([Doc. 1](#)) on August 22, 2019. Plaintiffs are civilly committed to the Florida Civilly Commitment Center (FCCC) and request the Court to “file federal charges” against the defendants on the basis that an FCCC policy prohibits them from communicating by mail with a former FCCC resident. (*Id* at 3, ¶ 7). Plaintiffs do not identify upon which federal statute “federal charges” should be brought. (See generally *Id.*).

¹ Disclaimer: Documents filed in CM/ECF may contain hyperlinks to other documents or websites. These hyperlinks are provided only for users’ convenience. Users are cautioned that hyperlinked documents in CM/ECF are subject to PACER fees. By allowing hyperlinks to other websites, this Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide on their websites. Likewise, the Court has no agreements with any of these third parties or their websites. The Court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the Court.

At the outset, Plaintiffs have improperly commenced this action. A civil action “is commenced by filing a complaint with the court.” [Fed. R. Civ. P. 3](#). To the extent that Plaintiffs wish to initiate a civil rights complaint pursuant to [42 U.S.C. § 1983](#), the Court has approved the use of a civil rights complaint form for cases filed by FCCC residents pursuant to [42 U.S.C. § 1983](#). Should Plaintiffs wish to properly initiate an action by filing a complaint stemming from the alleged “federal” violations committed by the defendants, they should file a complaint using the enclosed form. Additionally, Plaintiffs are required to initiate their own complaint. They cannot file a joint complaint if they wish to proceed in forma pauperis.

Even if the Court construes the Motion as a complaint it is nonetheless subject to dismissal. Plaintiffs did not accompany the filing of the complaint with the \$400.00 filing fee or a request to proceed in forma pauperis. The Court in its August 26, 2019 Standing Order cautioned Plaintiffs that, pursuant to his M.D. Fla. R. 1.03(e), this case would be dismissed if either the filing fee or a motion to proceed in forma pauperis was not filed within thirty (30) days from the date the action was commenced. (See [Doc. 4](#), ¶ 2).² M.D. Fla. R. 1.02(b)(1).

Accordingly, it is hereby

ORDERED:

1. This case is **DISMISSED without prejudice**.

² Local Rule 1.03(e) provides that a “prisoner case will be subject to dismissal by the Court, sua sponte, if the filing fee is not paid or the application to proceed in forma pauperis is not filed within 30 days of the commencement of the action.” Plaintiff as a civilly committed person is not a prisoner. See [Troville v. Venz, 303 F.3d 1256 \(11th Cir. 2002\)](#). Nonetheless, the Court as a courtesy extends the thirty 30-day period to residents at the FCCC.

2. If Plaintiffs wish to prosecute an action in connection with the allegations set forth in the Motion, they are required to individually initiate a new action by filing a new complaint on the enclosed civil rights complaint form. They should not use this case number on the complaint form. Plaintiffs each shall accompany the complaint form with the requisite \$400.00 filing fee or a motion to proceed in forma pauperis with a copy of their resident account statement.

3. The **Clerk** shall provide the above forms to Plaintiffs with this Order, **enter judgment dismissing this case without prejudice**, and close the file.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

DONE and **ORDERED** in Fort Myers, Florida this 2nd day of October, 2019.

SA: FTMP-1
Copies: All Parties of Record