

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

TERRY LEE PYLES,)
#34864)
)
Plaintiff,)
) **Case No. 17-cv-378-JPG**
vs.)
)
UNKNOWN PARTY,)
)
Defendants.)
)
)

MEMORANDUM AND ORDER

GILBERT, District Judge:

Plaintiff Terry Lee Pyles, a pretrial detainee at the Madison County Jail, brings this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff’s claims arise out of his arrest and pending prosecution in Madison County, Illinois for meth manufacturing and possession of meth manufacturing material. *State of Illinois vs. Pyles*, Case No. 2017-cv-690 (trial set for September 11, 2017).

This case is now before the Court for case management. As is set forth more fully below, Plaintiff’s Complaint (Doc. 1) fails to comply with Rule 10(a) of the Federal Rules of Civil Procedure and is therefore subject to dismissal without prejudice. *See Myles v. United States*, 416 F.3d 551 (7th Cir. 2005). Additionally, Plaintiff’s pending motions (Docs 5-7, 9) shall be denied.

Dismissal for Failure to Comply with Rule 10(a)

The Complaint is actually in the form of a letter to the Court (addressed “to whom it may concern”) and purports to raise claims pursuant to § 1983. (Doc. 1, p. 1). The Complaint describes Plaintiff’s arrest on March 7, 2017 and indicates that Plaintiff was the victim of excessive force by one or more arresting officers. (Doc. 1, pp. 1-10). The Complaint also alludes to other alleged violations of Plaintiff’s constitutional rights in connection with his arrest and pending trial. Some of the allegations are directed against unknown officials/officers at the Madison County Sherriff’s Office (Doc. 1, pp. 1-3, 6-10) and other allegations appear to be directed against Plaintiff’s attorneys in his pending criminal case (Doc. 1, pp. 4-5).

Although the Clerk of the Court designated “Unknown Party, Arresting Officers of Madison County Sheriff’s Department” as the Defendant in CM/ECF, these individuals are not actually identified as defendants in the caption of the Complaint. In fact, the Complaint does not include a case caption or a list of defendants.

Pursuant to Rule 10(a) of the Federal Rules of Civil Procedure “[e]very pleading *must have a caption* with the court’s name, a title, a file number, and a Rule 7(a) designation. The title of the complaint *must name all parties...*” (emphasis added). Though seemingly pedestrian, compliance with this aspect of Rule 10(a) is mandatory.¹ As the Seventh Circuit explained in

¹ Further, strict adherence to procedural requirements is appropriate even where, as in the instant case, a plaintiff is proceeding without the assistance of counsel:

While we have insisted that the pleadings prepared by prisoners who do not have access to counsel be liberally construed, and have held that some procedural rules must give way because of the unique circumstance of incarceration, we have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel. As we have noted before, “in the long run, experience teaches that strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law.”

McNeil v. United States, 113 S.Ct. 1980, 1984 (1993) (citations omitted).

Myles v. United States, 416 F.3d 551 (7th Cir. 2005), in order to make someone a party, the plaintiff must name the individual in the case caption and arrange for service of process. *Myles*, 416 F.3d at 551. *See also Id.* (“Naming and serving defendants is vital. How can one defend without first becoming a party?”). A *pro se* civil rights complaint that includes allegations against individual officials not specifically identified as defendants in the caption of the complaint does not comply with Rule 10(a) and is subject to dismissal. *Id.* at 551-53. In this scenario, it is “unacceptable for a court to add litigants on its own motion. Selecting defendants is a task for the plaintiff, not the judge.” *Id.* at 552-53.

Here, without a case caption, none of the individuals mentioned in the body of the Complaint can properly be considered a party under Rule 10(a).² The Court cannot cure this deficiency on its own motion by selecting individuals from the body of the Complaint and adding them as defendants to the instant action. Accordingly, as written, the Complaint does not specify a defendant and is subject to dismissal. However, the dismissal shall be without prejudice and with leave to amend. *See Donald v. Cook Cnty. Sheriff's Dep't*, 95 F.3d 548, 555 (7th Cir. 1996) (“When the substance of a *pro se* civil rights complaint indicates the existence of claims against individual officials not specifically named in the caption of the complaint, the district court must provide the petitioner with an opportunity to amend the complaint.”)

Motion/Notice to File for a Habeas Corpus Petition

Plaintiff has filed a pleading entitled “Notice to file for a Habeas Corpus Petition.” (“Notice”) (Doc. 6). In the Notice, Plaintiff asks to be “granted a habeas corpus.” (Doc. 6, p. 1). Plaintiff contends that he has been the victim of excessive force and raises several arguments in

² In other pleadings, Plaintiff suggests that he intends to bring claims against one or more unknown arresting officers. This, however, is insufficient. The Court does not accept piecemeal pleadings and the Complaint must stand on its own. Moreover, as set forth in *Myles*, in order to be considered a party, the individual must be named in the caption of the Complaint.

support of his request for release from jail, including alleged due process violations, lack of probable cause for arrest, and false charges. Plaintiff has also filed a Supplement in support of his Notice (Doc. 10) raising similar arguments.

Plaintiff's Notice, which challenges the fact of his confinement and seeks release from jail, must be denied. A request for release from jail cannot be combined with a § 1983 action for monetary damages. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). If Plaintiff wishes to challenge his confinement, he must file a separate habeas corpus action in either state or federal court.

Because Plaintiff is challenging his pretrial custody, any federal habeas corpus action would arise under 28 U.S.C. § 2241. *Jacobs v. McCoaghtry*, 251 F.3d 596, 597 (7th Cir. 2001); *Walker v. O'Brien*, 216 F.3d 626, 633 (7th Cir. 2000). Section 2241 allows a pretrial detainee to bring a habeas corpus petition, but this ability is limited by *Younger v. Harris*, 401 U.S. 37 (1971). Pursuant to *Younger*, unless “exceptional circumstances” exist, federal courts must abstain from interfering with pending state proceedings to enforce a state's criminal laws. *Stroman Realty, Inc., v. Martinez*, 505 F.3d 658, 662 (7th Cir. 2007); *see also Younger*, 401 U.S. at 43, 49. Exceptional circumstances have been found where irreparable damage would occur, such as prosecutorial harassment and bad faith, or speedy trial and double jeopardy claims—and then only after the petitioner has exhausted available state court remedies. *Younger*, 401 U.S. at 43, 49; *Braden v. 30th Judicial Circuit Court of Ky.*, 410 U.S. 484, 489-92 (1973) (collecting cases).

Plaintiff should keep these principles in mind in deciding whether to initiate a federal habeas corpus action.

Motion for Status

In light of the issuance of the instant Order, Plaintiff's Motion for Status (Doc. 9) shall be **DENIED** as **MOOT**. Additionally, the Court notes the Motion for Status and several of Plaintiff's pleadings contain questions seeking advice from the Court. The Court appreciates Plaintiff's desire to understand the judicial process and to proceed in a manner allowed by the rules and the law. However, the Court is prohibited from giving litigants legal advice. Accordingly, Plaintiff must look elsewhere for answers to his legal inquiries.

Motions for Counsel

Plaintiff has filed a Motion for Appointment of Counsel (Doc. 5) and a Motion for Recruitment of Counsel (Doc. 7). The initial motion merely indicates that Plaintiff is indigent, lacks education, and requires assistance. (Doc. 5). In the more recently filed motion, Plaintiff indicates that he has called "several" attorneys, but no one will take his calls. (Doc. 7, p. 1). Additionally, Plaintiff states that he is "not educated enough to conduct [himself] professionally in a court of law." (Doc. 7, p. 2). Plaintiff also states that he takes Ultram for pain and Ativan for anxiety. *Id.*

A district court "may request an attorney to represent any person unable to afford counsel." 28 U.S.C. § 1915(e)(1). There is no constitutional or statutory right to counsel for a civil litigant, however. *Stroe v. Immigration and Naturalization Services*, 256 F.3d 498, 500 (7th Cir. 2001); *Zarnes v. Rhodes*, 64 F.3d 285, 288 (7th Cir. 1995). Recruitment of counsel lies within the sound discretion of the trial court. *See Pruitt v. Mote*, 503 F.3d 647, 654 (7th Cir. 2007) (citing *Johnson v. Doughty*, 433 F.3d 1001, 1006 (7th Cir. 2006)).

In determining whether to recruit counsel, the Court is directed to make a two-fold inquiry: "(1) has the indigent plaintiff made a reasonable attempt to obtain counsel or been effectively precluded from doing so; and if so, (2) given the difficulty of the case, does the

plaintiff appear competent to litigate it himself?” *Pruitt*, 503 F.3d at 654 (citing *Farmer v. Haas*, 990 F.2d 319, 321-22 (7th Cir. 1993)). The first prong of the analysis is a threshold question. If a plaintiff has made no attempt to obtain counsel on his own, the court should deny the request. *See Pruitt*, 503 F.3d at 655.

Plaintiff satisfies neither requirement. The motions contain insufficient information for the Court to determine if Plaintiff has made *reasonable* attempts to secure counsel on his own before seeking the Court’s assistance in doing so. Further, despite his alleged lack of legal knowledge, Plaintiff evinces an ability to competently litigate this straightforward matter without the assistance of counsel. At this juncture, the Court is merely concerned with whether this action can get out of the gate, so to speak. All that is required is for Plaintiff to provide an amended complaint that names appropriate defendants in the caption and includes sufficient factual content regarding the constitutional violations allegedly committed by each defendant. Plaintiff alone has knowledge of these facts, and no legal training or knowledge is required to set them down on paper.

Therefore, the Motion for Appointment of Counsel (Doc. 5) and the Motion for Recruitment of Counsel (Doc. 7) are **DENIED** without prejudice. The Court will remain open to appointing counsel as the case progresses.

Proceeding Against Unknown Defendants

In Plaintiff’s initial Motion to Appoint Counsel (Doc. 5), Plaintiff indicates that he does not know the names of the officers who allegedly violated his constitutional rights when he was arrested. Plaintiff does not have to know the names of the individual defendants in order to file an amended pleading. Instead, Plaintiff may use John Doe or Jane Doe in place of the officer’s actual name (for example, John Doe 1, the arresting officer that did x; John Doe 2, the arresting officer that did y). As with all Defendants, the John Doe Defendants must be identified in the

caption of the amended complaint. In addition, the body of the amended complaint must describe how each John Doe Defendant allegedly violated Plaintiff's rights. If Plaintiff files an amended complaint and the Court allows him to proceed on a claim against a Doe defendant, Plaintiff can use discovery to identify the Doe defendant's real name.

Disposition

IT IS HEREBY ORDERED that Plaintiff's Motion for Appointment of Counsel (Doc. 5) and Motion for Recruitment of Counsel (Doc. 7) are **DENIED** without prejudice.

IT IS FURTHER ORDERED that Plaintiff's Motion/Notice to File for a Habeas Corpus Petition (Doc. 6) is **DENIED**. **If Plaintiff wishes to challenge the fact of his confinement and is seeking release, he must file a separate habeas corpus action in state or federal court.**

IT IS FURTHER ORDERED that Plaintiff's Motion for Status (Doc. 9) is **DENIED** as **MOOT**.

IT IS FURTHER ORDERED that the Complaint is **DISMISSED** without prejudice. Plaintiff is **GRANTED** leave to file a "First Amended Complaint" on or before **August 23, 2017**. Should Plaintiff fail to file his First Amended Complaint within the allotted time or consistent with the instructions set forth in this Order, the entire case shall be dismissed with prejudice for failure to comply with a court order and/or for failure to prosecute his claims. FED. R. APP. P. 41(b). *See generally Ladien v. Astrachan*, 128 F.3d 1051 (7th Cir. 1997); *Johnson v. Kamminga*, 34 F.3d 466 (7th Cir. 1994); 28 U.S.C. § 1915(e)(2).

Should Plaintiff decide to file a First Amended Complaint, it is strongly recommended that he use the forms designed for use in this District for such actions. He should label the form, "First Amended Complaint," and he should use the case number for this action (*i.e.* 17-cv-378-JPG).

To enable Plaintiff to comply with this Order, the **CLERK** is **DIRECTED** to mail Plaintiff a blank civil rights complaint form.

An amended complaint supersedes and replaces the original complaint, rendering the original complaint void. *See Flannery v. Recording Indus. Ass'n of Am.*, 354 F.3d 632, 638 n. 1 (7th Cir. 2004). The Court will not accept piecemeal amendments to the original Complaint. Thus, the First Amended Complaint must stand on its own, without reference to any previous pleading, and Plaintiff must re-file any exhibits he wishes the Court to consider along with the First Amended Complaint. The First Amended Complaint is subject to review pursuant to 28 U.S.C. § 1915(e)(2).

Plaintiff is further **ADVISED** that his obligation to pay the filing fee for this action was incurred at the time the action was filed, thus the filing fee remains due and payable, regardless of whether Plaintiff elects to file a First Amended Complaint. *See* 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998).

Finally, Plaintiff is **ADVISED** that he is under a continuing obligation to keep the Clerk of Court and each opposing party informed of any change in his address; the Court will not independently investigate his whereabouts. This shall be done in writing and not later than **7 days** after a transfer or other change in address occurs. Failure to comply with this Order will cause a delay in the transmission of court documents and may result in dismissal of this action for want of prosecution. *See* FED. R. CIV. P. 41(b).

IT IS SO ORDERED.

s/J. Phil Gilbert
United States District Judge