

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

JERMAINE S. EWING,)
)
 Plaintiff,)
)
 v.) No. 1:13-CV-114-SNLJ
)
 DEWAYNE KEMPKER, et al.,)
)
 Defendants.)

MEMORANDUM AND ORDER

This matter is before the Court on review of plaintiff's pro se complaint [Doc. #1] and motion for "joinder of claim" [Doc. #3]. The Court notes that the complaint is defective, because it has not been drafted on a Court-provided form. *See* Local Rule 2.06(A). In addition, plaintiff has neither paid the filing fee nor submitted a motion to proceed in forma pauperis along with a prison account statement. *See* 28 U.S.C. § 1915(a).

Because plaintiff is proceeding pro se and in forma pauperis, the Court will give him an opportunity to file an amended complaint on a court-provided form.¹ In so doing, plaintiff should select the transaction or occurrence he wishes to pursue, in

¹The Court will instruct the Clerk to mail plaintiff a blank form complaint for the filing of a prisoner civil rights action. Plaintiff must complete his amended complaint on the court-provided form.

accordance with Rule 20 of the Federal Rules of Civil Procedure,² and file an amended complaint, limiting his facts and allegations to the defendant(s) involved in said occurrence. Plaintiff should only include in his amended complaint those claims that arise out of the same transaction or occurrence. *See Fed.R.Civ.P. 20(a)(2).* Application of this rule will usually result in a complaint containing claims relating to just one event or time period at one correctional center.

Having decided upon the transaction or occurrence he wishes to pursue, plaintiff shall set forth in the "Caption" of the complaint the name of each defendant he wishes to sue; and in the "Statement of Claim," plaintiff shall start by typing the first defendant's name, and under that name, he shall set forth in separate numbered paragraphs the allegations supporting his claim(s) as to that particular defendant, as well as the right(s) that he claims that particular defendant violated. Plaintiff shall proceed in this manner with each of the named defendants, *separately* setting forth each individual name and under that name, in numbered paragraphs, the allegations specific to that particular defendant and the right(s) that he claims that particular

²Rule 20(a)(2) of the Federal Rules of Civil Procedure provides:

Persons . . . may be joined in one action as defendants if:

(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action.

defendant violated. The amended complaint must contain short and plain statements showing that plaintiff is entitled to relief, the allegations must be simple, concise, and direct, and the numbered paragraphs must each be limited to a single set of circumstances. If plaintiff needs more space, he may attach additional sheets of paper to the amended complaint and identify them as part of the "Caption" or "Statement of Claim." Plaintiff shall sign the amended complaint.

Plaintiff is reminded that he is required to submit his amended complaint on a court-provided form, and it must comply with Rules 8 and 10 of the Federal Rules of Civil Procedure. Plaintiff's failure to make specific and actionable allegations against any of defendant(s) will result in that individual's dismissal from this case.³

Because the Court is allowing plaintiff to amend his complaint, his motion for joinder of claim will be denied as moot. Plaintiff is advised that the amended complaint will replace the original complaint and will be the only pleading this Court reviews. *See, e.g., In re Wireless Telephone Federal Cost Recovery Fees Litigation*, 396 F.3d 922, 928 (8th Cir. 2005).

³The Court will review plaintiff's amended complaint pursuant to 28 U.S.C. § 1915 for frivolousness, maliciousness, and/or failure to state a claim. A claim and/or defendant must survive § 1915 review in order for plaintiff to proceed in this lawsuit.

Last, if plaintiff wishes to pursue additional claims against additional defendants, and the claims to not arise from the same transaction or occurrence, he must file each such claim(s) on a separate complaint form and either pay the \$400 filing fee or file a motion for leave to proceed in forma pauperis and certified inmate account statement. In this regard, the Court notes that, in the instant action, plaintiff has neither paid the filing fee nor submitted a motion to proceed in forma pauperis along with a prison account statement. *See* 28 U.S.C. § 1915(a). Plaintiff will be instructed to either pay the fee or submit the appropriate motion and account statement, as set forth below.

Accordingly,

IT IS HEREBY ORDERED that the Clerk shall mail to plaintiff a copy of the Court's form Prisoner Civil Rights Complaint, as well as a copy of the Court's form Motion to Proceed In Forma Pauperis – Prisoner Cases.

IT IS FURTHER ORDERED that, consistent with this Order, plaintiff shall file an amended complaint on the court-provided form within thirty (30) days of the date of this Order.

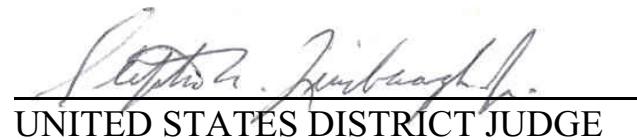
IT IS FURTHER ORDERED that plaintiff shall either pay the \$400 filing fee or submit a motion to proceed in forma pauperis within thirty (30) days of the date of this Order, and if plaintiff submits a motion to proceed in forma pauperis, he must

also submit a certified copy of his prison account statement for the six-month period immediately preceding the filing of his complaint.

IT IS FURTHER ORDERED that plaintiff's motion for joinder of claims [Doc. #3] is **DENIED** as moot.

IT IS FURTHER ORDERED that if plaintiff fails to comply with this Order, the Court will dismiss this action without prejudice and without further notice to him. If the case is dismissed, the dismissal will not constitute a "strike" under 28 U.S.C. § 1915(g).

Dated this 27th day of August, 2013.



UNITED STATES DISTRICT JUDGE