Leavitt v. Byrne et al

Doc. 4

IT THEREFORE IS ORDERED that the application to proceed *in forma pauperis* (Doc. 1) is **DENIED** and that this action shall be **DISMISSED** without prejudice to the filing of a new complaint in a new action together with either a new pauper application or payment of the \$350.00 filing fee.

IT FURTHER IS ORDERED that all pending motions are DENIED without prejudice.²

The Clerk of Court shall SEND plaintiff two copies each of the complaint and prisoner pauper forms along with one copy of the instructions for the forms and of the papers that he filed.

The Clerk shall enter final judgment accordingly, dismissing this action without prejudice.

Dated: May 5, 2014.

JENNIFER A. DORSEY United States District Judge

¹(...continued)

impact the analysis of these or other issues in a promptly filed and properly commenced new action.

²The Clerk of Court made docket entries for a motion for temporary restraining order and a motion for a preliminary injunction apparently based upon a one line reference to same in the complaint. Plaintiff must file standalone motions in order to move for temporary and/or preliminary injunctive relief. The papers presented in any event: (a) do not demonstrate that plaintiff has complied with the procedural requirements of Rule 65 of the Federal Rules of Civil Procedure for seeking temporary and/or preliminary injunctive relief; (b) do not reflect that plaintiff will sustain irreparable injury during the interval required to promptly file a properly-commenced new action; and (c) do not reflect that there is a substantial likelihood of success on plaintiff's claims on the allegations and showing made. The Court defers any definitive resolution of the merits of plaintiff's claims to consideration of such issues in a properly-commenced action. At present, the Court concludes only that the requests for temporary and/or preliminary injunctive relief do not reflect that plaintiff will sustain prejudice of substance in the interval between the dismissal of this action without prejudice and the prompt filing of a properly-commenced new action.

Nothing in this order directs, grants permission, or advises plaintiff to file any particular action in any particular court. Nor does this order hold by implication or otherwise that plaintiff presents a viable claim that currently is cognizable in a federal civil rights action. The present improperly-commenced action simply is being dismissed without prejudice to the filing of a new action.