

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ANTHONY DENNIS GUTEK,

Plaintiff,

v.

9:17-CV-0471
(BKS/TWD)

JOHN DOE #1, et. al.,

Defendant.

APPEARANCES:

ANTHONY DENNIS GUTEK
14-B-2918
Plaintiff, pro se
Livingston Correctional Facility
P.O. Box 91
Sonyea, NY 14556

THÉRÈSE WILEY DANCKS
United States Magistrate Judge

DECISION AND ORDER

Plaintiff Anthony Dennis Gutek ("Plaintiff") commenced this action by filing a pro se civil rights Complaint pursuant to 42 U.S.C. § 1983 ("Section 1983"), together with an application to proceed in forma pauperis. Dkt. No. 1 ("Compl."), Dkt. No. 5 ("IFP Application"). By Decision and Order filed on June 30, 2017 (the "June Order"), this Court granted Plaintiff's IFP application, but dismissed the Complaint because Plaintiff failed to name, as a defendant, any individual who was personally involved in the alleged constitutional violations. See Dkt. No. 8, *generally*. In light of his pro se status, Plaintiff was afforded an opportunity to amend the Complaint. See *id.*

On July 21, 2017, Plaintiff submitted an Amended Complaint. Dkt. No. 9 ("Am. Compl."). By Decision and Order filed on August 11, 2017 (the "August Order"), the Court found that Plaintiff's claims against the John Doe defendants survive review and require a response. Dkt. No. 10. The Court instructed the Clerk of the Court to send a copy of the Amended Complaint and the August Order to the Office of the County Attorney for Broome County. *Id.* at 4. The Broome County Attorney's Office was instructed to attempt to ascertain the identity of the defendants and addresses where they could be served and to provide that information to the Court. *Id.*

On September 11, 2017, the Broome County Attorney's Office responded to the August Order. Dkt. No. 11. In an Order filed on September 26, 2017 (the "September Order"), the Court directed the Clerk of the Court to forward a copy of the response to Plaintiff. Dkt. No. 12. The Plaintiff was instructed:

To the extent that Plaintiff can identify any of the other Doe defendants, he may amend his complaint. In an effort to assist plaintiff in drafting the proposed second amended complaint, the Clerk shall forward to plaintiff a copy of his amended complaint (Dkt. No. 9). Plaintiff may identify the Doe defendants by handwriting the names in the appropriate locations throughout on the copy of the amended complaint and indicate in the caption of the document that it is a second amended complaint. Once plaintiff has made these changes to the copy of the amended complaint, captioned it as his second amended complaint, and signed the proposed second amended complaint, he should submit it to the Court for review. Plaintiff should also keep a copy of the proposed second amended complaint for his personal records.

Dkt. No. 12.

On October 13, 2017, Plaintiff submitted a Second Amended Complaint in accordance

with the September Order.¹ Dkt. No. 13. Upon review, the Second Amended Complaint is accepted for filing and is the operative pleading in this action.

WHEREFORE, it is hereby

ORDERED that the Second Amended Complaint (Dkt. No. 13) is **ACCEPTED** for filing and is the operative pleading in this action; and it is further

ORDERED that the Clerk shall revise the docket to add (i) "David Parsons" as a defendant in place of defendant "John Doe #2;" (ii) "Ronald Riquier" as a defendant in place of defendant "John Doe #3;" and (iii) "Franklin Birt" as a defendant in place of "John Doe #4;" and it is further

ORDERED that the Clerk shall issue a summonses and forward them, along with copies of the Second Amended Complaint, to the United States Marshal for service upon the defendants. The Clerk shall forward a copy of the summonses and Second Amended Complaint to the Office of the County Attorney for Broome County, together with a copy of this Decision and Order; and it is further

ORDERED, that a response to the Second Amended Complaint be filed by the defendants, or their counsel, as provided for in the Federal Rules of Civil Procedure;

ORDERED, that all pleadings, motions and other documents relating to this action must bear the case number assigned to this action and be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367. **Any paper sent by a party to the Court or the Clerk must be accompanied by a certificate showing that a true and correct copy**

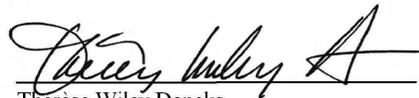
¹ Because defendants have not yet responded, the pleading was filed as of right pursuant to Rule 15(a).

of same was served on all opposing parties or their counsel. Any document received by the Clerk or the Court which does not include a proper certificate of service will be stricken from the docket. Plaintiff must comply with any requests by the Clerk's Office for any documents that are necessary to maintain this action. All parties must comply with Local Rule 7.1 of the Northern District of New York in filing motions. **Plaintiff is also required to promptly notify the Clerk's Office and all parties or their counsel, in writing, of any change in his address; their failure to do so will result in the dismissal of his action;** and it is further

ORDERED that the Clerk of the Court shall serve a copy of this Decision and Order on Plaintiff in accordance with the Local Rules.

Dated: December 1, 2017
Syracuse, New York

SO ORDERED:



Therèse Wiley Dancks
United States Magistrate Judge