

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DEWITT McGRIFF,

Plaintiff,

-against-

SUPERINTENDENT KEYSER; HEARING
OFFICER POLIZZI; DIRECTOR OF SHU
VENNETOZZI, in their official and individual
capacities,

Defendants.

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DATE FILED: 1/9/19

17-cv-7307 (NSR)

ORDER

NELSON S. ROMÁN, United States District Judge

Plaintiff DeWitt McGriff (“Plaintiff” or “McGriff”) commenced the instant action on or about September 22, 2017, by filing a complaint asserting claims sounding in 42 U.S.C. § 1983. (*See* Complaint, ECF No. 2.) Soon after, Defendants sought and were granted leave to file a Motion to Dismiss the Complaint with the following briefing schedule: Defendants’ moving papers to be served May 4, 2018; Plaintiff’s opposition papers to be served June 4, 2018; and Defendants’ reply papers to be served June 19, 2018. (ECF No. 11.)

In accordance with the briefing schedule, Defendants timely served their moving papers as directed. On June 5, 2018, in response to Defendants’ Motion to Dismiss, Plaintiff attempted to file Notice of Leave to file an Amended Complaint and a Proposed Amended Complaint in the form of a brief that further detailed his claims. (ECF No. 15.) But Plaintiff submitted his Notice and Amended Complaint without leave of court. (*Id.*) Consequently, on July 24, 2018, the Court denied Plaintiff’s Motion for Leave to Amend his Complaint, *without prejudice*, and gave Plaintiff until August 29, 2018 to file a proper amended complaint in proper form. (ECF No. 21.)

On August 1, 2018, Plaintiff submitted a letter to the Court expressing great confusion about the briefing schedule and asking the Court whether he needed to *serve* a new Notice of his Motion to Amend to Defendants. (ECF No. 22.) Consequently, on August 6, this Court issued a Memo Endorsement explaining that Plaintiff did not need to re-serve his motion. Rather:

- The Court would deem Plaintiff's documents filed at ECF No. 19 sufficient for Defendants to meet their August 8, 2018 deadline of serving Plaintiff with their Opposition to Plaintiff's Motion to Amend.
- Plaintiff would be required to *serve* a copy of his cross-reply in further support of his Motion to Amend by August 29, 2018.
- Defendants would be required *to file* all amendment motion-related documents, including Plaintiff's papers, on the cross-reply date, August 29, 2018.

(ECF No. 23.)

On August 29, Defendants wrote a letter to the Court, stating that they had not received a reply for their Opposition to Plaintiff's Motion to Amend, as due. (ECF No. 24.) Consequently, Defendants' filed all of their motions, which included their Motion to Dismiss the original Complaint, (ECF No. 25), a Memorandum in Support of their Motion to Dismiss the Complaint (ECF No. 26), and a Reply Memorandum in further support of their Motion to Dismiss the Complaint *and* in Opposition to Plaintiff's Motion to Amend (ECF No. 29.)

Oddly, through a deficient docket entry dated August 29, 2018, Plaintiff attempted to re-file a Notice of Motion for Leave to Amend his Complaint, which was a brief that combined his Proposed Amended Complaint with a Motion Opposing Defendants' Motion to Dismiss. (ECF No. 27.) This filing was terminated later the same day. (*See* Dkt. Entry Dated 8/29/2018.)

To date, the only proper motion before the Court appears to be Defendant' Motion to Dismiss the original Complaint. (ECF No. 25.) In addition, though there has never been a proper amended complaint filed in the proper *form of a complaint*, Plaintiff has made a few misguided

efforts to file and argue for such a motion, which Defendants have opposed, (ECF No. 29), but to which the Plaintiff has not yet replied.

Considering the incredibly convoluted procedural history of this case, Plaintiff's *pro se* status, the interests of judicial economy, and Plaintiff's numerous attempts to seek leave to file an amended complaint, the Court grants Plaintiff leave to file his amended complaint **in the proper form of an amended complaint, which is not to be combined with his Motion Opposing Defendants' Motion to Dismiss.** Plaintiff has until February 13, 2019 to formulate his amended complaint and *serve* it on Defendants.

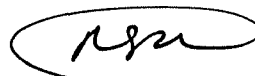
If Defendants' receive an amended complaint, then upon receipt of the Amended Complaint, and by no later than February 15, 2019, Defendants are to inform the Court as to whether they would like to rely on their pending Motion to Dismiss or whether they would like to withdraw their pending motion at ECF No. 25 and file a new motion to dismiss. Defendants are directed to file Plaintiff's Amended Complaint and their letter response on ECF by this date.

Plaintiff's failure to abide by this deadline will deem the original Complaint the operative Complaint once and for all, and the Court will make no further exceptions.

Accordingly, the Clerk of the Court is respectfully directed to mail a copy of this order to Plaintiff at Plaintiff's last address listed on CEO and file proof of service on the docket.

Dated: January 9, 2019
White Plains, New York

SO ORDERED:



NELSON S. ROMÁN
United States District Judge