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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JAMES SEELEY, 03A1621,

Plaintiff,

-v-

10-CV-6570CJS

**ORDER**

DR. SANDRA BUEHART,  
DR. VICTORIA DUELL, FHSD, and  
MALCOLM CURRY, Superintendent,

Defendants.

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The Court directed service of the summons and complaint on the defendants by Order dated November 3, 2010 (Docket No. 3). Prior to issuance of the summons for service on the defendants, plaintiff filed a motion to amend the complaint and a motion for appointment of counsel (Docket No. 4).

For the reasons discussed below, plaintiff is granted leave to file an amended complaint for review by the Court and plaintiff's motion for appointment of counsel is denied.

**AMENDED COMPLAINT**

Pursuant to FED.R.CIV.P. 15(a)(1), if plaintiff wishes to assert additional parties and/or claims he is directed to file an amended complaint with the Court. The amended complaint will then be reviewed based on 28 U.S.C. §§ 1915(e)(2)(B) and 1915A.

Plaintiff is advised that an amended complaint is intended to **completely replace** the prior complaint in the action. "It is well established that an amended complaint ordinarily supersedes the

original and renders it of no legal effect." Arce v. Walker, 139 F.3d 329, 332 n. 4 (2d Cir. 1998) (quoting International Controls Corp. v. Vesco, 556 F.2d 665, 668 (2d Cir. 1977)); see also Shields v. Citytrust Bancorp, Inc., 25 F.3d 1124, 1128 (2d Cir. 1994). Therefore, plaintiff's amended complaint must include all of the allegations against each of the defendants and regarding the claims he is raising in the amended complaint, so that the amended complaint may stand alone as the sole complaint in this action which the defendants must answer.

Plaintiff has until **February 22, 2011** to file an amended complaint. If plaintiff does not file an amended complaint by **February 22, 2011**, the initial complaint will proceed forward pursuant to the Court's Order dated November 3, 2010 (Docket No. 3).

#### **APPOINTMENT OF COUNSEL**

Plaintiff has filed a motion to appoint counsel (Docket No. 4). There is insufficient information before the Court at this time to make the necessary assessment of plaintiff's claims under the standards promulgated by Hendricks v. Coughlin, 114 F.3d 390, 392 (2d Cir. 1997), and Hodge v. Police Officers, 802 F.2d 58 (2d Cir. 1986), as issue has yet to be joined. Plaintiff's motion for appointment of counsel is, therefore, denied as premature.

#### **ORDER**

IT HEREBY IS ORDERED, that plaintiff is granted leave to file an amended complaint as directed above by **February 22, 2011**;

FURTHER, that plaintiff's motion for appointment of counsel is denied as premature;

FURTHER, that the Clerk of the Court is directed to send to plaintiff with this Order a copy of the original complaint, a blank § 1983 complaint form, and the instructions for preparing an amended complaint; and

FURTHER, that in the event plaintiff fails to file an amended complaint as directed above by **February 22, 2011**, the initial complaint will proceed forward pursuant to the Court's Order dated November 3, 2010.

**SO ORDERED.**

S/ MICHAEL A. TELESKA  
MICHAEL A. TELESKA  
United States District Judge

Dated: January 13, 2011  
Rochester, New York