

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TIMOTHY RICE,	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO. 24-CV-1501
	:	
C/O KARASTON, et al.	:	
Defendants.	:	

ORDER

AND NOW, this 5th day of June, 2024, upon consideration of Plaintiff Timothy Rice's Motion to Proceed *In Forma Pauperis* (ECF No. 1), his letter in support thereof (ECF No. 5), and *pro se* Complaint (ECF No. 2), it is **ORDERED** that:

1. Leave to proceed *in forma pauperis* is **GRANTED** pursuant to 28 U.S.C. § 1915.
2. Timothy Rice, # DV-2363, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Court directs the Superintendent of SCI Phoenix or other appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Rice's inmate account; or (b) the average monthly balance in Rice's inmate account for the six-month period immediately preceding the filing of this case. The Superintendent or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this Order to the Court with a reference to the docket number for this case. In each succeeding month when the amount in Rice's inmate trust fund account exceeds \$10.00, the Superintendent or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to Rice's inmate account until the fees are paid. Each payment shall refer to the docket number for this case.

3. The Clerk of Court is **DIRECTED** to send a copy of this Order to the Superintendent of SCI Phoenix.
4. The Complaint is **DEEMED** filed.
5. The Complaint is **DISMISSED IN PART WITH PREJUDICE** and **DISMISSED IN PART WITHOUT PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for the reasons stated in the Court’s Memorandum, as follows:
 - a. The official capacity claims are **DISMISSED WITH PREJUDICE**.
 - b. The remaining claims, except for the excessive force claim against Correctional Officer Karaston in his individual capacity, are **DISMISSED WITHOUT PREJUDICE**.
6. Rice is given thirty (30) days to file an amended complaint in the event he can allege additional facts to state plausible claims for the claims that have been dismissed without prejudice. **If Rice files an amended complaint, his amended complaint must be a complete document that includes the factual basis for each of Rice’s claims, including claims that the Court has not yet dismissed if he seeks to proceed on those claims. This means that if Rice files an amended complaint, he must include allegations related to his excessive force claim against Correctional Officer Karaston, which has not been dismissed, if he seeks to proceed on that claim. Claims that are not included in the amended complaint will not be considered part of this case because the amended complaint becomes the pleading upon which the case will proceed.** Any amended complaint shall identify all defendants in the caption of the amended complaint in addition to identifying them in the body of the amended complaint, shall state the basis for Rice’s claims against each defendant, and shall bear the title “Amended Complaint” and the case number 24-1501. When drafting his amended complaint,

Rice should be mindful of the Court's reasons for dismissing his claims as explained in the Court's Memorandum. Upon the filing of an amended complaint, the Clerk shall not make service until so **ORDERED** by the Court.

7. The Clerk of Court is **DIRECTED** to send Rice a blank copy of the Court's form complaint for a prisoner filing a civil rights action bearing the above civil action number. Rice may use this form to file his amended complaint if he chooses to do so.

8. If Rice does not file an amended complaint, the Court will direct service of his Complaint on Defendant Correctional Officer Karaston only. Rice may also notify the Court that he seeks to proceed only on this excessive force claim, rather than file an amended complaint. If he files such a notice, Rice is reminded to include the case number for this case, 24-1501.

9. The time to serve process under Federal Rule of Civil Procedure 4(m) is **EXTENDED** to the date 90 days after the Court issues summonses in this case if summonses are issued.

BY THE COURT:

/s/ Hon. Kelley B. Hodge

KELLEY BRISBON HODGE, J.