

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

EDWARD R. COSS, JR.,	:	
Plaintiff	:	
	:	
vs.	:	CIVIL NO. 1:CV-10-2462
	:	
LACKAWANNA COUNTY PRISON, et al.,	:	(Judge Caldwell)
Defendants	:	(Magistrate Judge Blewitt)

*M E M O R A N D U M*

The pro se plaintiff, Edward Coss, currently an inmate at SCI-Huntingdon, Huntingdon, Pennsylvania, filed this action arising from disciplinary proceedings against him that took place while he was confined at the Lackawanna County Prison, Scranton, Pennsylvania. The magistrate judge has filed a report and recommendation, recommending that the complaint be dismissed for failure to state a claim.

Plaintiff has filed objections to the report. The objections have no merit. We comment briefly on two matters Plaintiff has raised. Citing *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974), Plaintiff asserts that the gravamen of his complaint is the failure of the misconduct form to include a space indicating whether the inmate wanted to call any witnesses. *Wolff* does not support such a claim<sup>1</sup> and Plaintiff cites no other authority for it. Plaintiff also requests leave to amend the complaint. We need not grant leave to amend if amendment would be futile. See *Alston v. Parker*, 363

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<sup>1</sup> The case does support the right to call witnesses but no right to have the misconduct form include a reference to a request for witnesses.

F.3d 229, 235 (3d Cir. 2004). The magistrate judge's report establishes that it would be futile.<sup>2</sup> Hence, we will simply dismiss the complaint.

We will issue an appropriate order.

/s/William W. Caldwell  
William W. Caldwell  
United States District Judge

Date: February 16, 2011

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<sup>2</sup> Our reasoning differs from that of the magistrate judge only in regard to the Lackawanna County Prison. The prison should be dismissed, not because it is not a "person" covered under section 1983, but because a county prison does not have the legal capacity to be sued in its own name. *Johnson v. DeRose*, No. 09-267, 2010 WL 817398 at \*9 n.2 (M.D. Pa. Mar. 9, 2010)(Caldwell, J.).

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*O R D E R*

AND NOW, this 16th day of February, 2011, upon consideration of the report (doc. 9) of the magistrate judge, filed January 6, 2011, the objections thereto, and upon independent review of the record, it is ordered that:

1. The magistrate judge's report is adopted.
2. Plaintiff's application (doc. 6) to proceed in forma pauperis is granted.
3. Plaintiff's federal claims are dismissed under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state claims upon which relief may be granted.
4. Plaintiff's state law claim for intentional infliction of emotional distress is dismissed without prejudice pursuant to 28 U.S.C. § 1367(c)(3).
5. The Clerk of Court shall close this file.

/s/William W. Caldwell  
William W. Caldwell  
United States District Judge