

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
JUL 27 2017

CLERK

<p>DONALD EAST, Plaintiff, vs. DR. HEISLER, LINDA OSBORNE, JESSICA HOFFMAN, MICHAEL JOE HANVEY, Defendants.</p>	<p>4:16-CV-04122-RAL OPINION AND ORDER DENYING MOTION</p>
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Plaintiff Donald East ("East"), an inmate at the Mike Durfee State Prison in Springfield, South Dakota, filed this lawsuit pursuant to 42 U.S.C. § 1983. Doc. 1. East amended his complaint, Doc. 10, and this Court screened his amended complaint pursuant to 28 U.S.C. § 1915A, Doc. 11, dismissing it in part but allowing East's Eighth Amendment claim to proceed. East again amended his complaint, Doc. 17, and this Court again screened his complaint and dismissed it in part. Doc. 20. East recently filed a third amended complaint, which is pending. Doc. 25.

In East's most recent motion, he moves this Court to appoint him counsel, extend time in which to serve defendants, and grant permission to file excess pages. Doc. 29. In his motion, East states that he plans to file a fourth amended complaint. *Id.* at 2. Because East's motion to amend his second

amended complaint is still pending, East must give the Court notice whether he will file a fourth amended complaint or whether he wishes the Court to screen his proposed third amended complaint.

Further, if East wishes to amend his complaint, he must follow the local rules of procedure which state “any party moving to amend a pleading will attach a copy of the proposed amended pleading to its motion to amend with the proposed changes highlighted or underlined so that they may be easily identified.” D.S.D. Civ. LR 15.1. East must also file a motion to amend, as he did with his proposed third amended complaint.

East has twice moved this Court to appoint him counsel, Doc. 3, Doc. 16, and this Court has denied both motions. Doc. 11, Doc. 20. In his current motion, East again moves for appointment of counsel, and his motion is denied because nothing has changed in his case. East continually amends his complaint, but it does not seem that this is done out of a lack of understanding of the legal rules and process but because he is dissatisfied with this Court’s conclusions. Still, this Court has liberally construed all of East’s complaints and motions and will continue to do so because he proceeds pro se.

East also worries that the ninety day limit in which to serve his complaint will run out. “Under Federal Rule of Civil Procedure 4(m), if a plaintiff shows good cause for untimely service, then the court must extend the period for service.” *Wright v. First Student, Inc.*, 710 F.3d 782, 783 (8th Cir.

2013). If the delay is merely a result of this Court's pre-service screening of East's complaint, East will likely be able to show "good cause."

Finally, East's motion concerns complaints that defendants are not giving him evidence for his lawsuit.¹ At this point however, East is not required to present evidence. "Federal pleading rules call for 'a short and plain statement of the claim showing that the pleader is entitled to relief[.]'"

Johnson v. City of Shelby, Miss., 135 S. Ct. 346, 346 (2014) (quoting Fed. R. Civ. P. 8(a)(2)). This statement is all East is required to provide at this point. In this Court's previous screening orders, East's claims were mostly dismissed for purely legal reasons, and none were dismissed because of a lack of evidence.

Accordingly, it is ORDERED

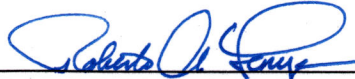
1. East shall give the Court notice whether he will file a fourth amended complaint or whether he wishes the Court to screen his proposed third amended complaint. He must give notice by August 3, 2017. If he fails to do so, or fails to follow the local rule quoted above, this Court will screen his proposed third amended complaint under 28 U.S.C. § 1915A.
2. East's motion for appointment of counsel (Doc. 26) is denied.

¹ If East wishes to raise claims concerning the issues highlighted in his motion, he must do so in an amended complaint or in a separate lawsuit.

3. East's motion to appoint counsel, motion for extension, and motion to file excess pages (Doc. 29) is denied.

Dated July 27th, 2017.

BY THE COURT:



ROBERTO A. LANGE
UNITED STATES DISTRICT JUDGE