

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

CHALMERS A. SIMPSON, et al. : CIVIL ACTION
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DEPARTMENT OF CORRECTIONS, : :
et al. : NO. 98-760

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

AND NOW, this 18th day of March, 1998, plaintiff Chalmers A. Simpson's motion to proceed in forma pauperis is granted. However, the complaint is dismissed because it does not comply with Rules 8(a), 10, and 11 of the Federal Rules of Civil Procedure, and is otherwise deficient. This ruling is without prejudice to the right to file a new complaint in conformity with the law and the pertinent Rules no later than April 17, 1998.

This is a civil rights action under 42 U.S.C. § 1983 involving Pennsylvania parole procedures and state prison issues when plaintiff Simpson was an inmate in the state correctional system.¹ The complaint lists Mr. Simpson and 10 anonymous individuals as plaintiffs and alleges constitutional violations by the Pennsylvania Department of Corrections, "SCI Coal Township Institution," the "Harrisburg Board of Probation & Parole," the

¹ Plaintiff Simpson is no longer incarcerated.

"Philadelphia Board of Probation and Parole," the "Philadelphia District Office of Parole," as well as by 28 individual defendants.

As to the 10 anonymous plaintiffs, the complaint states that their identities have been withheld so as to protect them from retaliation by defendants. Procedurally, however, if, as it appears, these plaintiffs are prison inmates, each may be required to pay the filing fee, albeit in installments, in accordance with the Prison Litigation Reform Act – unless the inmate's prison account does not exceed \$10 during the period of the lawsuit. See 28 U.S.C.A. § 1915(b)(1),(2) (1994 & Supp. 1997); Madden v. Myers, 102 F.3d 74, 76 (3d Cir. 1996).² Moreover, there is a lack of compliance with Fed. R. Civ. P. 10 and 11, which provide that a complaint include the names of all the parties and that each pro se plaintiff sign the complaint.

As to the contents of the complaint, Fed. R. Civ. P. 8(a) provides:

A pleading which sets forth a claim for relief . . . shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks.

A § 1983 plaintiff presumably cannot be held to a heightened pleading standard, see Leatherman v. Tarrant County

² If permissive joinder is available under Rule 20, which would depend on the nature of the claims and the underlying facts, a question arises whether the Prison Litigation Reform Act would still necessitate payment of the filing fee by each plaintiff. See 28 U.S.C.A. § 1915(b)(1) (1994 & Supp. 1997).

Narcotics Intelligence and Coordination Unit, 507 U.S. 163, 167-68, 113 S. Ct. 1160, 1163, 122 L. Ed.2d 517 (1993). Nevertheless, under Rule 8(a)(2), a complaint must include "a short and plain statement of the claim that will give . . . notice of . . . plaintiff's claim . . . and the grounds upon which it rests." Id. at 168, 113 S. Ct. at 1163 (quoting Conley v. Gibson, 355 U.S. 41, 47, 78 S. Ct. 99, 103, 2 L. Ed.2d 80 (1957) (internal quotations omitted)).

Here, the statement of the claim is insufficient; it does not state the purported constitutional violations or defendants' involvement in them. Consequently, it is impossible to determine whether any specific constitutional deprivation has been alleged, and defendants are not given adequate notice of the claims to allow them to respond.³

If a new complaint is filed, it shall set forth in separate paragraphs (1) "a short and plain statement of the claim" sufficient to show facts entitling relief; (2) each defendant by name and the role that each played in the alleged constitutional deprivations; (3) the harm allegedly caused by each defendant; and

³ In addition, the Pennsylvania Department of Corrections, a state agency, is not suable because it is not a legal entity. See Fischer v. Cahill, 474 F.2d 991, 992 (3d Cir. 1973). A proper defendant is the officer in charge of a state agency, sued in his or her official capacity for injunctive relief, see Hafer v. Melo, 502 U.S. 21, 27, 112 S. Ct. 358, 362-63, 116 L. Ed.2d 301 (1991), or in his or her individual capacity for monetary damages, see id. at 31, 112 S. Ct. at 365. Furthermore, "SCI Coal Township Institution" and the probation and parole offices named in the complaint, as divisions or subdivisions of state agencies or municipalities, do not appear to be suable entities.

(4) a demand for relief. If the anonymous plaintiffs are prison inmates, a new complaint shall so state and, to the extent applicable, shall be subject to the provisions of the Prison Litigation Reform Act. No decision is made at this time whether the anonymous plaintiffs may proceed without disclosing their identities.

Edmund V. Ludwig, J.