

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

<b>EMANUEL BORELAND,</b>	:	<b>CIVIL ACTION</b>
	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>DONALD T. VAUGHN, et al.,</b>	:	
	:	
<b>Defendants.</b>	:	<b>NO. 97-5590</b>

**Reed, S.J.**

**March 7, 2000**

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

**I. BACKGROUND**

Plaintiff Emanuel Boreland (“Boreland”) is no stranger to this Court. A prisoner in the custody of the Pennsylvania Department of Corrections, Mr. Boreland has come before this Court as a *pro se* plaintiff in eight separate actions over the past eight years. On each of those occasions, this Court has allowed plaintiff to proceed *in forma pauperis* and devoted substantial time, energy, and resources to the preservation and protection of his due process rights. Thus, upon turning to the defendants’ motion for summary judgment in the instant action, I decided to first investigate the full extent of Mr. Boreland’s litigiousness. The results of my investigation were staggering.

By my count, Mr. Boreland has filed 24 total actions and appeals in federal courts in the last eight years, 10 actions in this district alone.<sup>1</sup> These actions include dozens of assertions of

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<sup>1</sup> In the Eastern District, Mr. Boreland was or is a plaintiff in Civil Actions Nos. 99-5528, 99-4002, 99-3150, 97-5590, 93-4664, 97-3973, 92-458, 92-334, 92-311, 92-172. In the Middle District, Mr. Boreland was or is a plaintiff in Civil Actions Nos. 97-1641, 97-1065, 95-1429, 95-1255, 94-557, 93-544, 92-212. Boreland has filed five appeals with the Court of Appeals for the Third Circuit (including App. Nos. 93-1899, 93-1272, 97-7571, and

constitutional deprivations and state law claims based on allegations that prison officials forced him to sleep in an unsafe bunk, coerced him into undergoing “embarrassing” psychological testing, took a blood sample in violation of his religious beliefs, caused him to fall while seating him on a transport bus, failed to provide him with a hot meal one day, made him share a cell with another inmate for two days, and deprived him of a new pair of underwear. Over the past eight years, he has sued the Commonwealth of Pennsylvania, the Pennsylvania Department of Corrections, countless prison officials and guards, the Philadelphia Sheriff’s Department, the Office of the District Attorney of Philadelphia, the director of the Immigration and Naturalization Service, the United States Postal Service, and the United States of America. He has challenged the conditions of nearly every institution in which he has ever been incarcerated. Moreover, Mr. Boreland has squandered the scarce judicial resources<sup>2</sup> of this and other courts through the contentious and burdensome manner in which he has litigated his cases; filing innumerable motions for extension of time, making odd and burdensome discovery requests, moving without justification to recuse judges and clerks, withdrawing suits after filing them, and failing to respond to motions and court orders.

Courts have found little merit in any of Mr. Boreland’s suits. The vast majority of his actions have been dismissed or terminated on or before summary judgment. One case proceeded to a bench trial over which this Court presided; I found in favor of defendants. Every one of plaintiff’s appeals have been denied, as was plaintiff’s petition for certiorari to the Supreme

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two pending cases), and a petition for certiorari to the Supreme Court, which was denied by all nine justices. See Boreland v. Vaughn, 513 U.S. 1167, 115 S. Ct. 1139 (1995).

<sup>2</sup> It should be noted that among the judicial resources plaintiff did not squander was a pair of this Court’s reading glasses, which were loaned to plaintiff for use during a bench trial in 1993; the glasses were never returned and, the Court hopes, have since been put to good use. These events play no role in the decision in this case.

Court.

## II. ANALYSIS

I recite this litigious litany not merely to provide context; in fact, the disposition of Mr. Boreland's numerous prior *in forma pauperis* actions has real consequences for this Court's consideration of the present action. The Prison Litigation Reform Act ("PLRA"), which governs *in forma pauperis* actions, includes a "three-strikes provision," which forbids any further civil action or appeal from being brought *in forma pauperis* by an incarcerated plaintiff who has,

on three or more prior occasions ... brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915 (g). Under the PLRA, it is the court's responsibility to assess whether an action may proceed *in forma pauperis*, and a court may dismiss *in forma pauperis* actions *sua sponte*. See 28 U.S.C. §§ 1915 (e) (2), 1915A. Thus, this Court has the authority and responsibility to raise, *sua sponte*, the issue of whether plaintiff is barred from proceeding *in forma pauperis* under § 1915 (g).<sup>3</sup>

Upon a review of Mr. Boreland's prior actions and appeals, I conclude that he has enough strikes to close out an inning. This Court has dismissed two of his actions explicitly on the basis that they were frivolous. See Boreland v. Vaughn, No. 92-334, U.S. Dist. LEXIS 1395 (E.D. Pa. 1992) ("For the foregoing reasons, the complaint will be dismissed as frivolous pursuant to 28

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<sup>3</sup> The Court of Appeals has implicitly accepted that district courts have the authority to review, *sua sponte*, a plaintiff's *in forma pauperis* status. See Gibbs v. Ryan, 160 F.3d 160, 162, n.2 (3d Cir. 1998). In Gibbs, on the recommendation of a magistrate judge, the district court revoked a plaintiff's *in forma pauperis* status, which had been granted prior to the effective date of PLRA. While the court of appeals concluded that the PLRA did not apply to cases pending at the time it went into effect, the court of appeals did not question the court's authority to review *in forma pauperis* status *sua sponte*, and gave guidance to district courts on the proper procedure for revoking *in forma pauperis* status. Id.

U.S.C. § 1915 (d).”); Boreland v. Speech, No. 93-4664 (E.D. Pa. 1993). Judge Vanaskie of the Middle District of Pennsylvania, who has seen his share of Mr. Boreland’s cases as well, considered plaintiff’s complaint in Boreland v. Pennsylvania. Dept. of Corrections, No. 97-1065 (M.D. Pa.), and, in a thoughtful, carefully written, unpublished memorandum, concluded that

[u]nder the most liberal construction, Boreland’s prior complaints were clear violations of Rule 8. They were rambling, at times incomprehensible documents and did not give the Defendants fair notice of what his claims are and the grounds upon which they rest. They also certainly did not set forth in brief, concise, and understandable terms what it is about which he is complaining.

This language clearly indicates Judge Vanaskie’s conclusion that Boreland had failed to state a claim upon which relief could be granted. Judge Vanaskie provided Mr. Boreland with an opportunity to amend his complaint, and when Mr. Boreland failed to do so, the action was dismissed for failure to respond. However, the gravamen of Judge Vanaskie’s dismissal was undoubtedly Mr. Boreland’s failure to state a claim upon which relief may be granted, one of the enumerated bases for a strike under § 1915 (g).

In Boreland v. Beard, No. 92-212 (M.D. Pa.), Judge McClure of the Middle District authored a decision that also counts as a strike under § 1915 (g). In the dispositive motion in the case, Judge McClure granted defendants’ motion for summary judgment. Judge McClure wrote,

The court has examined separately Boreland’s scattershot allegations of unconstitutional prison conditions and endeavored in vain to uncover evidence or even the suggestion of evidence, that would create a genuine issue [of material fact]. Simply put, the record may support a finding that Boreland experienced discomforts and inconveniences that are realities of prison life, but it will not sustain a judgment that defendants deliberately violated any of Boreland’s retained constitutional rights.

Order, at 4-5. The order concluded, “Any appeal from this decision will be deemed frivolous, not taken in good faith, and lacking probable cause.” The language of the order and the

accompanying memorandum lead to the unmistakable conclusion that the action was dismissed because it was “frivolous,” and thus constituted yet another strike under § 1915 (g).

Mr. Boreland has two additional strikes against him at the appellate level. Twice Mr. Boreland has appealed interlocutory district court orders to the Court of Appeals for the Third Circuit. (App. Nos. 93-1899, 97-7571). On both occasions, the court of appeals dismissed the appeals because the orders were not appealable; the appellate equivalent of a decision that the appeals were frivolous. Because court of appeals held that Mr. Boreland had no legal foundation for his appeals, the appellate dismissals count as strikes against Mr. Boreland.

Finally, in at least two cases, Mr. Boreland’s claims against numerous defendants have been dismissed as frivolous. In Boreland v. Vaughn (No. 92-172), this Court dismissed all plaintiff’s claims against four of the five defendants as frivolous. In Boreland v. Batterly (No. 92-458), plaintiff sued ten individual and institutional defendants, and this Court dismissed the complaint as frivolous as to eight defendants, allowing the case to proceed against only two defendants in favor of whom a verdict was entered after a bench trial. This raises the interesting question of whether the dismissal of all claims against an individual defendant as frivolous or malicious or for failure to state a claim qualifies as a strike under the § 1915 (g). While I do not believe it necessary to resolve this question today, as plaintiff has more than the requisite number of strikes against him, I do observe that the dismissal of all claims against a named defendant on one of the grounds enumerated in § 1915 (g) could possibly constitute a dismissal of an “action” against an individual defendant, and therefore a strike, under § 1915 (g).

Based on the foregoing analysis, I conclude that plaintiff has at least three strikes against him under the terms of § 1915 (g), and therefore may not proceed *in forma pauperis* in this

action.

### III. CONCLUSION

Emanuel Boreland is the poster-prisoner for the PLRA, a litigant who has abused the justice system with lawsuits that “tie up the courts, waste valuable judicial resources, and effect [sic] the quality of justice enjoyed by the law-abiding population.” Lopez v. Smith, No. 97-16987, 2000 U.S. App. LEXIS 1740, \* 56-57 (9<sup>th</sup> Cir. Feb. 10, 2000) (Sneed, J., dissenting) (quoting 141 Cong. Rec. S14408-01, \*S14413 (statement of Senator Dole)). His is precisely the manner of litigiousness Congress intended to stem in enacting the PLRA, and he should no longer be allowed to proceed with another suit on the American taxpayer’s dime.<sup>4</sup>

I granted plaintiff’s motion to proceed *in forma pauperis* in this action without a full recollection or understanding of plaintiff’s litigiousness or his multiple strikes under § 1915 (g). I now believe that plaintiff is not eligible to proceed *in forma pauperis* under the terms of the PLRA, and must pay the full amount of the filing fee before his suit continues.<sup>5</sup> Thus, my Order of November 7, 1997 (Document No. 6) will be revoked, and with it plaintiff’s *in forma pauperis* status. Mr. Boreland may resume his action in this Court upon prepaying the entire amount of the filing fee. See Rodriguez, 169 F.3d at 1182.

An appropriate Order follows.

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<sup>4</sup> “IFP status is not a constitutional right ... ‘Congress is no more compelled to guarantee free access to a federal court than it is to provide unlimited access to them.’” Rodriguez v. Cook, 169 F.3d 1176, 1180 (9<sup>th</sup> Cir. 1999) (quoting Rivera v. Allin, 144 F.3d 719, 724 (11<sup>th</sup> Cir. 1998), cert. dismissed, 524 U.S. 978 (1998)). Nor is this Court compelled to grant Mr. Boreland free and unlimited access to court; to the contrary, the PLRA prohibits this Court from allowing Mr. Boreland to proceed with this action for free.

<sup>5</sup> While the remittance of a filing fee is not jurisdictional, see McDowell v. Delaware State Police, 88 F.3d 188, 191 (3d Cir. 1996), it is an “administrative hurdle” that the Court may require a plaintiff to clear before considering the merits of the case. See Smith v. District of Columbia, 182 F.3d 25, 28 n.2 (D.C. Cir. 1999) (“an appellate who has neither paid the full fees required nor been granted *in forma pauperis* status is not entitled to have this court consider his appeal at all”).



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	:	
<b>DONALD VAUGHN, et al.</b>	:	<b>NO. 97-5590</b>

**ORDER**

**AND NOW**, this 7th day of March, 2000, upon the Court's reconsideration, *sua sponte* of plaintiff's *in forma pauperis* status, and having concluded, for the reasons set forth in the foregoing memorandum, that plaintiff is ineligible to proceed *in forma pauperis* under the Prison Litigation Reform Act, 28 U.S.C. § 1915 (g) because three or more prior actions and appeals filed by plaintiff have been dismissed on the grounds that they were frivolous or failed to state a claim upon which relief could be granted, it is hereby **ORDERED** that:

1. This Court's Order of Order of November 7, 1997 (Document No. 6), granting plaintiff permission to proceed *in forma pauperis* is hereby **REVOKED**.
2. This action is **DISMISSED** without prejudice for failure to pay the filing fee.
3. The action will be reinstated as a matter of course if plaintiff pays the \$150.00 filing fee no later than April 21, 2000.

It is so **ORDERED**.

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**LOWELL A. REED, JR., S.J.**