

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

|                      |   |              |
|----------------------|---|--------------|
| HARVENS BRUNACHE,    | : | CIVIL ACTION |
| Plaintiff,           | : |              |
|                      | : | NO. 99-5668  |
| v.                   | : |              |
|                      | : |              |
| CORRECTIONAL OFFICER | : |              |
| KEVIN JAMES, et al., | : |              |
| Defendants.          | : |              |

**MEMORANDUM**

BUCKWALTER, J.

June 20, 2001

This case has a long history beginning on November 15, 1999. On June 6, 2000, plaintiff's original and first amended complaints were dismissed as frivolous, but the second amended complaint was allowed to proceed as to certain defendants. The previously dismissed complaints as well as the second amended complaint fall far short of federal pleading standards. All the complaints were long, rambling, and difficult to read. Nevertheless, in light of his *pro se* status, the court permitted the second amended complaint to be served upon certain defendants.

Ultimately, a scheduling order was entered on October 11, 2000 directing that all discovery be completed by February 15, 2001 and the case be placed in the trial pool by March 19, 2001. On January 3, 2001, the court granted defendants' permission to take plaintiff's deposition by telephone. On February 10, 2001, defendants filed a motion to dismiss complaining that plaintiff would not participate in the deposition in a meaningful way. By order dated April 4, 2001, I denied defendants' motion, but prohibited plaintiff from thereafter

engaging in further discovery, the date for which had long since passed in any event. By the April 4, 2001 order, trial was set for June 11, 2001 at 10:00 a.m. in Courtroom 14A.

On April 30, 2001, plaintiff filed a motion in limine requesting the court to prohibit defendants from making any references to his previous prison disciplinary record or his criminal history. I denied that motion without prejudice to its being raised at the time of trial.

On June 11, 2001, at the time and place scheduled for trial, plaintiff requested to see the court before jury selection. For the first time since this case began on November 15, 1999, plaintiff requested counsel. The docket reflects that up until this point, plaintiff demonstrated substantial knowledge as to how to proceed himself. Moreover, plaintiff has already been through a civil trial, although at that time he was represented by counsel (See Civil Action No. 98-6018).

The court ascertained that plaintiff has a tenth grade education, he is 35 years old, and has spent a considerable amount of time in and out of prison since he was 18. The record reveals that he is capable of expressing himself both orally and in writing. The case itself is not complicated, involving an alleged beating by prison guards.

The plaintiff is personally responsible for the dilemma he finds himself in. He waited until the very last minute to ask for counsel and to say he could not proceed without counsel. This request is too late. In the past, there has been some dilatory conduct on the part of plaintiff particularly with regard to his conduct at his attempted deposition. His last minute request is in bad faith; he has known for months of his scheduled trial date; he even prepared a motion in limine; he knew from prior cases that he could seek appointment of counsel early in the proceedings; and while, as I found before, there is merit to his claim if his testimony is

believed, there really is at this point no alternative sanction. A monetary sanction is out of the question in light of his *in forma pauperis* status which I previously granted to him. Discovery sanctions were already imposed in my April 4, 2001 order. While no specific prejudice was alleged by defendants, the fact is they came to court prepared for trial on June 11, 2001, the specific date set by my order of April 4, 2001, and plaintiff did not proceed.

Balancing the six Poulis<sup>1</sup> factors, I find that they weigh in favor of defendants' Federal Rule of Civil Procedure 41(b) motion to dismiss for failure to prosecute made orally on June 11, 2001.

An order follows.

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1. Poulis v. State Farm and Casualty Co., 747 F.2d 863 (3d Cir. 1984).

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| Defendants.          | : |              |

**ORDER**

AND NOW, this 20<sup>th</sup> day of June, 2001, it is hereby ORDERED that defendant's motion to dismiss is GRANTED, and this case is CLOSED.

BY THE COURT:

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RONALD L. BUCKWALTER, J.