

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

JOEL SANDLER	:	CIVIL ACTION
	:	
v.	:	05-1032
	:	
ROBERT FEDER, DAVID SNYDER, SEAN	:	
CULLEN, RAYMOND KUTER, ROBERT	:	
DONATONI, THOMAS BERGSTROM, LOWER	:	
MERION TOWNSHIP POLICE, MONTGOMERY	:	
COUNTY DISTRICT ATTORNEY'S OFFICE,	:	
BRUCE CASTOR, NORRIS GELMAN, RISA	:	
FERMAN, ERIC ECHEVARRIA, WILLIAM	:	
NICHOLAS	:	

**MEMORANDUM AND ORDER**

**JOYNER, J.**

**January 31, 2006**

Via the motion now pending before this Court, Plaintiff Justin Corliss seeks an extension of time to serve the summons in this case. For the reasons outlined below, the motion shall be DENIED as MOOT, the Amended Complaint filed shall be DISMISSED and Mr. Corliss will be TERMINATED from this case.

**Factual Background**

Mr. Sandler and Mr. Corliss are prisoners held in correctional institutions in Pennsylvania. It is unclear how or where they met, but at some point Mr. Corliss apparently began acting in the capacity of "jailhouse lawyer" by assisting Mr. Sandler with the drafting and filing of documents related to this law suit. (Mot. for Extension of Time to Effectuate Summons Due to Criminal Interference with Plaintiff's Mailing ("Mot. for Extension") at ¶¶ 1,3.) Mr. Sandler and Mr. Corliss are now housed in different correctional facilities, and are therefore

not permitted to exchange correspondence with one another. (Mot. for Extension at ¶¶ 2, 12 and Exs. A, D; *DC-ADM 803, Inmate Mail and Incoming Publications Policy* at 5 (2005).) Prison officials apparently may authorize communication among inmates at different facilities when those inmates are co-plaintiffs in a law suit. (Mot. for Extension at Exs. N, O.)

Mr. Corliss found that his status as jailhouse lawyer for Mr. Sandler was insufficient to allow him to send and receive communication either with Mr. Sandler or on Mr. Sandler's behalf. (Mot. for Extension at ¶2, 9, 12 and Exs. A, D.) Mr. Corliss filed the Amended Complaint for the purpose of adding himself as a plaintiff. (Mot. for Extension at ¶ 7.) Mr. Corliss does not claim to have suffered any of the injuries alleged in the amended complaint. (Am. Compl. at ¶ 3; Mot. for Extension at Ex. E.) Mr. Corliss assured the Clerk of Courts that the only difference between the original Complaint and the Amended Complaint is that Mr. Corliss added himself as a plaintiff. Id. According to Mr. Corliss, his interest in this case is based on his role as a "assignee" and "de facto representative" of Mr. Sandler. (Am. Compl. at ¶ 2; Mot. for Extension at ¶ 3.) Mr. Corliss further indicates that Mr. Sandler has promised some compensation contingent on the outcome of the case.<sup>1</sup> Id.

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<sup>1</sup>This arrangement appears to be in violation of the Department of Corrections prohibitions on both receiving items of value from other inmates and engaging in a private business or profession while incarcerated. See Commw. of Pa. Dept. of Corr. Inmate Handbook at 2, 4 (2005).

On September 24, 2005, Mr. Corliss filed a motion to extend the time to serve summonses. This motion was filed in reference to the summonses Mr. Corliss expected to receive based on the filing of the Amended Complaint. (Mot. for Extension at ¶¶ 14, 15.) Mr. Corliss claims that mail from the courts had been improperly withheld, thereby preventing him from receiving the summonses and effectuating service. (Mot. for Extension at ¶¶ 17-19.) At the time Mr. Corliss drafted and mailed his motion, summonses for the amended complaint had not yet been issued. On September 14, 2005, after Mr. Corliss mailed the motion but before that motion was received by the court, summonses were issued based on the amended complaint and mailed to Plaintiffs. Docket Entry of Sept. 14, 2005 in Sandler v. Feder, Civ. A. No. 05-1032 (E.D. Pa.). As of this time, it does not appear that those summonses have yet been served.

#### **Discussion**

As a preliminary matter, Mr. Corliss's motion seeking to extend the time in which to serve the summonses is moot. The summonses issued and sent to Plaintiffs on September 14, 2005 based on the Amended Complaint could have been served at least through January 6, 2005. See Docket Entry of Sept. 14, 2005, supra. The relief requested -- the extension of the time for service until December 1, 2005 -- is, therefore, moot. (Mot. for Extension at ¶ 19.)

Mr. Corliss's motion, however, brings to the Court's attention his joinder of himself as a plaintiff via the Amended Complaint. Based on Mr. Corliss's statements regarding the nature of his relationship with Mr. Sandler, this Court sua sponte reviews Mr. Corliss's joinder as a plaintiff in this case.

The issue before the Court is whether Mr. Corliss was properly joined as a plaintiff in this action. Courts are split on whether an Amended Complaint, particularly one submitted without leave of court, may be used to join a party. See Lehigh Mechanical, Inc. v. Bell Atl. Tricon Leasing Corp., Civ. A. No. 93-673, 1993 U.S. Dist. LEXIS 10678, \*6 (E.D. Pa. July 28, 1993) (noting split of authority as to whether Fed. R. Civ. P. 15(a) or 21 controls the addition of a party through amendment of a complaint); Tex. Energy Reserve Corp. v. Dept. of Energy, 535 F. Supp. 615, 620-21 (D. Del. 1982) (noting lack of agreement among both courts and commentators as to whether joinder may be effectuated through amendment as of right pursuant to Fed. R. Civ. P. 15(a) or if leave of court is always required as set forth in Fed. R. Civ. P. 21). We need not address this question because, regardless of how joinder is accomplished, the court may, as discussed below, review the misjoinder of parties at any time. Thus, we consider Mr. Corliss's status with the assumption that he was effectively joined as a plaintiff by virtue of the Amended Complaint.

Federal Rule of Civil Procedure 21 establishes the manner in which the court shall address the misjoinder of parties. Rule 21 provides that "[p]arties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just." Fed. R. Civ. P. 21. Thus, the Court may consider whether joinder of a party is proper even absent a motion to add or drop a party.

Misjoinder of parties refers to the joining of parties who do not meet the requirements of Federal Rule of Civil Procedure 20(a). See Norwood Co. v. RLI Ins. Co., Civ. A. No. 01-6153, 2002 U.S. Dist. LEXIS 5974, \*4-5 (E.D. Pa. Apr. 4, 2002); Miller v. Hygrade Food Prod. Corp., 202 F.R.D. 142, 144 n.2 (E.D. Pa. 2001). Rule 20(a) allows any person to join an action as a plaintiff if (1) he or she seeks relief based on the same transaction or occurrence and (2) some common question of law or fact will arise as part of the action. Id.; Fed. R. Civ. P. 20(a). The proper remedy for misjoinder of a party is dismissal or severance of the improperly joined party. Fed. R. Civ. P. 21; see also Sablosky v. Budzanoski, 457 F.2d 1245, 1249 (3d Cir. 1972).

Mr. Corliss does not meet the requirements of Rule 20(a). Mr. Corliss's position in this suit -- by his own admission -- is that of a legal representative of Mr. Sandler. Every claim of both the Complaint and Amended Complaint is based on the events that allegedly occurred leading up to and surrounding Mr.

Sandler's arrest, trial, and conviction. Each claim for relief is on behalf of Mr. Sandler. Mr. Corliss does not claim to have been a part of these events, nor does he claim that any of the alleged actions injured him in any way. The only transaction or occurrence giving rise to any interest on Mr. Corliss's behalf is whatever promise or agreement Mr. Corliss attempted to make with Mr. Sandler based on or related to the outcome of this case.

Thus, Mr. Corliss cannot be said to have claims for relief arising out of the same transaction or occurrence as the original claims, and is not a proper plaintiff in this case. This Court, therefore, has the power pursuant to Rule 21 to dismiss Mr. Corliss from this case. This result is consistent with courts' limitations of the role played by a jailhouse lawyer.

A prisoner may have a right to consult with and receive assistance from a fellow inmate where that prisoner cannot otherwise obtain access to the courts. Johnson v. Avery, 393 U.S. 483, 489 (1969). A jailhouse lawyer cannot, however, act as the legal representative of another inmate. See, e.g., Garcia v. Wilhelm, Civ. A. No. 91-2248, 1991 U.S. Dist. LEXIS 18271, \*4-6 (S.D.N.Y. Dec. 18, 1991) (distinguishing "legal assistance" from "legal representation" and determining that jailhouse lawyers cannot engage in the latter even where "lawyer" and "client" are co-plaintiffs in a case arising from the same series of events); see also Storseth v. Spellman, 654 F.2d 1349, 1355 (9th Cir. 1981) (noting that nothing allows jailhouse lawyers "to engage in

the practice of law by filing papers with the court as the inmate's legal representative"). Furthermore, courts have found that the right to a jailhouse lawyer does not create a right to consult a jailhouse lawyer that is transferred to another facility. See *Goff v. C.C. Nix*, 113 F.3d 887, 890 (8th Cir. 1997) (finding that state penitentiary policy prohibiting legal correspondence between inmates in different units did not violate prisoners' rights despite potential to disrupt inmate's relationship with jailhouse lawyer); see also 1-7 Const. Rts. of Prisoners § 7.5 (2004) (noting that courts have declined to extend the right to a jailhouse lawyer to cover prisoners seeking legal assistance from inmates housed in other facilities).

Mr. Corliss attempts to act as Mr. Sandler's legal representative. This is evident both in his filings with the Court on Mr. Sandler's behalf and in his attempts to paint himself as some sort of fiduciary or assign. Despite Mr. Corliss's attempt to obscure the nature of the relationship with creative phraseology, Mr. Corliss essentially seeks to act on Mr. Sandler's behalf in the same manner as an attorney. Mr. Corliss, however, has no authority to do so, nor does Mr. Sandler have the right to give Mr. Corliss such authority. Although Mr. Sandler may have the right to obtain legal assistance from his fellow inmates, that right neither entitles him to legal representation by an inmate nor exempts him from the restrictions on correspondence between inmates in different facilities. As

discussed above, Mr. Corliss is not a proper plaintiff in this case. Furthermore, because he cannot -- regardless of whether he is a party to the action -- act as Mr. Sandler's legal representative, Mr. Corliss's filing of the Amended Complaint was improper. The Amended Complaint must, therefore, be dismissed, and Mr. Sandler will have an opportunity to properly file an amended complaint.

For all of the reasons set forth above, the motion to extend time to serve summonses is denied as moot, the Amended Complaint is dismissed, and Justin Corliss is terminated from this case.

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**MEMORANDUM AND ORDER**

AND NOW, this 31<sup>st</sup> day of January, 2006, upon review of Plaintiff's Amended Complaint (Doc. No. 3) and the Motion for Extension of Time to Effectuate Service (Doc. No. 4), it is hereby ORDERED as follows:

- (a) the motion seeking an extension of time to effectuate service of summonses is hereby DENIED as MOOT;
- (b) the Amended Complaint is DISMISSED;
- (c) Justin M. Corliss is hereby TERMINATED as a party; and
- (d) Plaintiff shall have thirty (30) days from the date he receives this order to file a new amended complaint.

BY THE COURT:

s/J. Curtis Joyner  
J. CURTIS JOYNER, J.