

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

RICHARD LONEY BOOZER,)	Civil Action No. 2:16-cv-1232
)	
Plaintiff,)	United States District Judge
)	Kim R. Gibson
v.)	
)	
ANGELA RIGGENBACH, et al.,)	United States Magistrate Judge
Defendants.)	Cynthia Reed Eddy
)	

REPORT AND RECOMMENDATION

I. RECOMMENDATION

It is respectfully recommended that the motions to dismiss filed by the DOC Defendants (ECF No. 34) and the Medical Defendants (ECF No. 39) be granted to the extent that Plaintiff's Amended Complaint (ECF No. 24) should be stricken for Plaintiff's failure to comply with the threshold requirements of the Federal Rules of Civil Procedure. It is also recommended that the Court allow Plaintiff one final opportunity to file a second amended complaint that complies with the Federal Rules of Civil Procedure.

II. REPORT

A. Procedural History and Factual Allegations

Plaintiff, Richard Loney Boozer, is a Pennsylvania state inmate who is presently incarcerated at SCI-Houtzdale. The events giving rise to this lawsuit occurred while Plaintiff was incarcerated at SCI-Greene.

Boozer initiated this lawsuit on August 15, 2016, by the filing of a request seeking *in forma pauperis* ("IFP"), with an attached 25-page handwritten Complaint, the majority of which was written on repurposed DC-141 forms. On September 2, 2016, Plaintiff was granted IFP

status. Contemporaneously the undersigned statistically closed the case and ordered that a proper pleading be filed, noting that the case would be reopened upon the filing of a proper complaint. ECF No. 4. Boozer was advised that he could not use “reused” paper and was told to use the blank Complaint form, which was being provided to him by the Court.

Therefore, on or about October 17, 2016, Boozer submitted another handwritten complaint, which totaled 38 pages. ECF No. 7. In response, the DOC Defendants filed a Motion for More Definite Statement based on Plaintiff’s failure to comply with Rules 8 and 10 of the Federal Rules of Civil Procedure. ECF No. 17. The Court granted the motion, and allowed Plaintiff to once again amend his complaint. Plaintiff was cautioned that “if he fails to comply with this Order, his case may be dismissed for lack of prosecution.” ECF No. 19.

On April 7, 2017, Boozer filed an Amended Complaint, in which he added approximately forty (40) pages to his previous complaint and added five (5) new defendants. The Amended Complaint is 81 pages of nearly illegible handwriting and fails to include consecutively numbered paragraphs or separate counts. It contains allegations against past and present employees at SCI-Greene, medical care providers, a facility chaplain program manager, a culinary food service manger, a mailroom inspector, grievance coordinators/ officers, and a number of John/Jane Does. Moreover, the Amended Complaint contains a number of unrelated legal claims stemming from distinct and separate events, which appear to span a period of time when Plaintiff was placed in solitary confinement. Plaintiff’s claims include, but are not limited to, an assault, placement in solitary confinement without due process, interference with filing of grievances, the denial of and/or interference with access to medical care for various medical conditions, interference with religious correspondence, fabrication of misconduct reports, and

interference with the disciplinary hearing process. Finally, in almost every averment, Plaintiff conclusively claims that Defendants' actions were the result of a conspiracy. Plaintiff claims violations of his First, Eighth, Ninth, and Fourteen Amendment rights of the United States Constitution, and has references to claims of negligence, "gross negligence," corporate negligence, and vicarious liability.

B. Discussion

Plaintiff is proceeding *pro se* and such parties are accorded substantial deference and liberality in federal court. *Haines v. Kerner*, 404 U.S. 519 (1972). Moreover, Plaintiff is a prisoner and the United States Court of Appeals for the Third Circuit has cautioned that courts must be especially "flexible when dealing with imprisoned *pro se* litigants" because they have limited access to resources "to comply with the technical rules of modern litigation." *Mala v. Crown Bay Marina*, 704 F.3d 239, 244-45 (3d Cir. 2013). However, *pro se* litigants, whether incarcerated or not, are not free to ignore the Federal Rules of Civil Procedure.¹

The DOC Defendants and the Medical Defendants have filed Motions to Dismiss Plaintiff's Amended Complaint for failure to comply with Federal Rules of Civil 8, 10, and 20, and for failure to follow the Court's directive to submit a complaint that complies with the Rules.

In response to the motions, Boozer filed a "Counter Motion to Dismiss for a Failure to

¹ Although there is not a heightened pleading standard in § 1983 cases, a § 1983 complaint must bear reasonable relation to the Rules. It must contain a modicum of factual specificity, identifying the particular conduct of the defendant that is alleged to have harmed the plaintiff, so that the court can determine whether the complaint is frivolous and whether a defendant has adequate notice to frame an answer. *Frazier v. Southeastern Pennsylvania Transp. Auth.*, 785 F.2d 65, 68 (3d Cir. 1986). A civil rights complaint complies with this standard if it alleges the conduct violating the plaintiff's rights, the time and the place of that conduct, and the identity of the responsible officials. It must include factual allegations to support the constitutional claims raised in the complaint. *See Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

State A Claim,” (ECF No. 42), which consists of a recitation of the procedural history the case, cites a number of citations on the standards to be employed in deciding motions to dismiss, argues that Plaintiff’s claims are “related” because they all arise from his “September 30, 2015 solitary confinement,” and then he moves for a “counterclaim,” pursuant to Federal Rule of Civil Procedure 12(a)(1)(B).

Boozer’s request for leave to file a “counterclaim” should be denied rather summarily. Given that Boozer is the plaintiff in this case and that his original claims are the basis of this lawsuit, there is no need for him to assert a counterclaim; therefore, this request should be denied.

Turning to the merits of the motions to dismiss, the Court begins by noting that while the complaint of a plaintiff proceeding *pro se* is “held to less stringent standards than formal pleadings drafted by lawyers” and must be “liberally construed,” *Erickson v. Pardus*, 551 U.S. 89 (2007), nothing in the lenience accorded a *pro se* filing excuses a plaintiff from complying with the threshold requirements of the Federal Rules of Civil Procedure.

Under Fed.R.Civ.P. 8(a)(2), a complaint must include “a short and plain statement of the claim showing that the pleader is entitled to relief” The words “short and plain” are themselves short and plain, and they mean what they say: A complaint must be concise, and it must be clear. Rule 8 was not promulgated to provide helpful advice; it has the force of law, and it must be followed.

In this case, Boozer has utterly failed to once again comply with Rule 8. Plaintiff’s amended complaint is not “short.” As Defendants point out, the amended complaint sprawls across 81 pages, and contrary to Local Rule 5.1, the amended complaint has no discernible

margins.² Nor is Boozer's amended complaint "plain." The factual and legal allegations are, to a substantial extent, incomprehensible. There still is virtually no detail as to who did what and when. The paragraphs are not consecutively numbered, and the complaint has many paragraphs that span multiple pages. In sum, the 81-page, single-spaced, margin-less amended complaint falls far short of satisfying the directives of Rule 8.

Next, Federal Rule of Civil Procedure 10(b) requires,

A party must state its claims . . . in numbered paragraphs, each limited as far as practicable to a single set of circumstances. . . If doing so would promote clarity, each claim founded on a separate transaction or occurrence - . . . - **must be stated in a separate count . . .** (emphasis added).

The Amended Complaint also does not conform to this Rule. Even a cursory reading, shows an intermingling of claims which makes it extremely difficult if not impossible for the defendants to answer this Amended Complaint. Under Rules 8 and 10, Boozer must, at a minimum, offer a short and plain statement of his claims, and must do so in a manner that can be followed, by separating claims and allegations, and identifying how each defendant is involved.

Here, the "Statement of Facts" is approximately seventy pages. There are no separate counts as required by Rule 10. The Statement of Legal Claims reads, in its totality, as follows:

Plaintiff claims that the following constitutional amendments were violated.

1. The U.S. Const. Amend. 1.
2. The U.S. Const. Amend. 8.
3. The U.S. Const. Amend. 9.
4. The U.S. Const. Amend. 14.

(Amended Complaint, at p. 80).

And most importantly, the amended complaint is in violation of the rules of joinder as set

² Local Rule 5.1(B) specifies that the general format of papers presented for filing must contain margins "at least one inch on all four sides."

forth in Federal Rule of Civil Procedure 20, which provides for joinder of defendants when a plaintiff's claims "aris[e] out of the same transaction, occurrence, or series of transactions or occurrences." Fed.R.Civ.P.20(a)(2). Though the requirements of Rule 20(a) are to be liberally construed in the interests of convenience and judicial economy, "the policy of liberal application of Rule 20 is not a license to join unrelated claims and defendants in one lawsuit." *Salley v. Wetzel*, 2013 WL 3157558, at *3 (M.D.Pa. June 20, 2013), *aff'd sub nom. Salley v. Sec'y Pennsylvania Dep't of Corr.*, 565 F. App'x 77 (3d Cir. 2014) (citing *Pruden v. SCI Camp Hill*, 252 F. App'x 436 (3d Cir. 2007)).

Boozer's amended complaint is against approximately thirty-five (35) defendants and it appears that the only common thread between these defendants is that their alleged unconstitutional acts occurred while Plaintiff was in "solitary confinement" at SCI-Greene. It appears that Boozer has sued almost every staff member he came in contact with at SCI-Greene and has lumped them together in bald, conclusory, rambling allegations that offer no specifics, and few dates. The amended complaint fails to proffer sufficient factual allegations supporting the contention that the various actions and events complained of constitute a single unified transaction or occurrence. Instead, Boozer's amended complaint identifies a series of discrete events which, perhaps, give rise to discrete cases. *See Pruden v. SCI Camp Hill*, 252 F. App'x at 438. Stating that all the claims arise from the time he was in solitary confinement is not enough to make the discrete events "related" for purposes of Rule 20.

There also exists another important reason for requiring compliance with Rule 20. The Prison Litigation Reform Act of 1995 ("PLRA") compels compliance with Rule 20. Specifically, under the PLRA the full filing fee must ultimately be paid in a non-habeas action. Allowing a

prisoner to include a plethora of separate, independent claims, would circumvent the filing requirements of the PLRA. *Mincy v. Klem*, 2007 WL 1576444, at *1 (M.D.Pa. May 30, 2007). See *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (“Unrelated claims against different defendants belong in different suits, not only to prevent the sort of morass that this [multiple]-claim, [multiple]-defendant suit produced but also to ensure that prisoners pay the required filing fees.”).

The Amended Complaint is best described as a “kitchen sink” or “shotgun” complaint - a complaint in which a plaintiff brings every conceivable claim against every conceivable defendant. Simply because all the events allegedly occurred while Plaintiff was in solitary confinement is not enough to make the claims “related.” Complaints, such as Plaintiff’s, are troublesome for many reasons. For one thing, complaints like the instant one unfairly burden defendants and the court. The plaintiff who files such a shotgun complaint shifts onto the defendants and the court the burden of identifying the plaintiff’s genuine claims and determining which of those claims might have legal support. This is not the job of either a defendant or the Court.

It is important to note that a “kitchen-sink” or “shotgun” complaint also harms the plaintiff who brings it. In most cases, a genuine dispute that supports a viable legal claim underlies a plaintiff’s complaint. But this genuine dispute becomes almost impossible to discern when it is buried in pages of various allegations, some of which may not rise to the level of a viable claim.

Plaintiff has been given numerous opportunities and granted extensions of time to file an adequate complaint that complies with the Federal Rules. He has been instructed on how to do

so and warned that his failure to comply with the Court's instructions would result in dismissal of any such complaint.

Notwithstanding these prior admonitions, should this report and recommendation be adopted, it is recommended that Plaintiff be given one final opportunity to file an amended complaint that complies with the Federal Rules, as described in this report and recommendation. Boozer should be advised that the second amended complaint must be complete in all respects. It must be a new pleading which stands by itself as an adequate complaint without reference to the complaint(s) already filed. He must choose only the related claim(s) on which he will proceed in this lawsuit. The other claims, if he chooses to pursue, should be filed in separate lawsuits. Again, to the extent that Boozer believes that he has been subjected to more than one violation of his rights, and to the extent those violations are unrelated to each other, he should file separate complaints addressing each violation along with separate motions to proceed in forma pauperis.

III. CONCLUSION

It is respectfully recommended that the motions to dismiss (ECF Nos. 34 and 38) be granted to the extent that Plaintiff's Amended Complaint should be dismissed for his failure to comply with the Federal Rules of Civil Procedure. The Court should allow Plaintiff the opportunity to file a Second Amended Complaint that complies with the Federal Rules. The motions to dismiss are dismissed without prejudice to Defendants right to refile a motion to dismiss against any amended complaint or new complaint that Plaintiff may file.

Any party is permitted to file Objections to this Report and Recommendation to the assigned United States District Judge. In accordance with 28 U.S.C. § 636(b), Fed.R.Civ.P. 6(d)

and 72(b)(2), and LCvR 72.D.2, Plaintiff, because he is a non-electronically registered party, must file objections, if any, to this Report and Recommendation by **February 16, 2018**, and Defendants, because they are electronically registered parties, must file objections, if any, by **February 13, 2018**. The parties are cautioned that failure to file Objections within this timeframe “will waive the right to appeal.” *Brightwell v. Lehman*, 637 F.3d 187, 193 n. 7 (3d Cir. 2011).

Dated: January 29, 2017

/s Cynthia Reed Eddy
Cynthia Reed Eddy
United States Magistrate Judge

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