

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

KENNETH LANG, JR.,)
)
 Plaintiff)
)
v.) Civil No. 99-0052-P-H
)
DENNIS DANIELS, et al.,)
)
 Defendants)

RECOMMENDED DECISION

Plaintiff has filed a lengthy pro se Complaint pursuant to 42 U.S.C. section 1983, together with two Applications to Proceed In Forma Pauperis. Reviewing the most recent Application, dated February 11, 1999,¹ I hereby recommend the Application be DENIED for the reason that Plaintiff has sufficient funds from which to pay the filing fee in this matter. I further recommend that Plaintiff be DIRECTED to pay the filing fee no later than a date certain to be set by the Court, and that Plaintiff be notified that even if he chooses to pay the full fee, the Court will nevertheless review the Complaint and is required to dismiss it if the Complaint:

(1) is frivolous, malicious or fails to state a claim upon which relief may be granted; or

¹ The two Applications differ greatly, for reasons not explained, in the amounts shown on the certificate of Plaintiff's inmate account.

(2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A(b).

This Complaint is particularly susceptible to dismissal under subsection (1). The Complaint sets forth in approximately 50 paragraphs each and every complaint Plaintiff has with the operation of the York County Jail. In most of the paragraphs Plaintiff does not allege that he was personally subject to the policy or action of which he complains, nor does he attribute the particular conduct of which he complains to any particular Defendant. Defendants may only be held liable for their own acts or omissions. *Monell v. Department of Soc. Serv.*, 436 U.S. 658, 691 (1978). Further, those acts or omissions must be shown to have been deliberately indifferent to Plaintiff's constitutional rights. *City of Canton v. Harris*, 489 U.S. 378, 389-90 (1989).

Several of the paragraphs describe limitations on Plaintiff's ability to do legal research or consult with an attorney. However, in order to assert a claim that his constitutional right of access to the courts has been denied, an inmate is required to assert "actual harm" resulting from the particular deficiencies alleged. *Fletcher v. Casey*, 116 S. Ct. 2174, 2179 (1996). Plaintiff has not done so in this Complaint, and may not be able to remedy that problem, as it appears he may be represented by

counsel. *See, Bounds v. Smith*, 430 U.S. 817, 828 (1977) (the institution may choose to satisfy its constitutional mandate in this regard by providing “adequate assistance from persons trained in the law”).

Many of the paragraphs set forth complaints about conditions at the jail which do not rise to the level of constitutional violations. The Eighth Amendment does not guarantee that a prison will be comfortable. *Wilson v. Seiter*, 501 U.S. 294, 298 (1991) (citing *Rhodes v. Chapman*, 452 U.S. 337, 349 (1981)). “[O]nly those deprivations denying ‘the minimal civilized measure of life’s necessities’ . . . are sufficiently grave to form the basis of an Eighth Amendment violation.” *Id.* (quoting *Rhodes*, 452 U.S. at 347).

These are only examples; Plaintiff has apparently included a paragraph touching upon every detail of his confinement at the York County Jail. Plaintiff should generally be aware that each of those paragraphs will be reviewed should he choose to pay the \$150 filing fee and proceed with this action, and that the \$150 will not be refunded in the event the Complaint is dismissed.

Conclusion

For the foregoing reasons, I hereby recommend the Application to Proceed In Forma Pauperis be DENIED, and that Plaintiff be directed to pay the filing fee in this matter by a date to be set by the Court, failing which the matter will be dismissed.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated on March 3, 2000.