

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

LARRY DEAN ROLLINS,)
)
 Plaintiff)
)
 v.) Civil No. 03-82-B-W
)
 MARTIN A. MAGNUSSON, et al.,)
)
 Defendants)

**ORDER DENYING, AND BARRING
ANY FURTHER, MOTIONS TO AMEND OR SUPPLEMENT COMPLAINT**

Larry Rollins has a suit pending in this court seeking remedy for the defendants' alleged deliberate indifference to his health during his still ongoing incarceration at the Maine State Prison. Currently there are multiple motions filed by Rollins now pending before the court, all of which attempt to amend or supplement his complaint. (Docket Nos.126, 136, 137, 138 & 141.) I now **DENY** all five motions and order that Rollins will not be allowed to file further motion for amendments or supplementation of this action, which from here on out is limited to the claims arising out of the defendants' provision of health care to Rollins in 2002.

Discussion

Rollins suffers from diabetes and claims that he has experienced some serious complications with his vision. He complains that the defendants are not giving his acute eye condition the immediate medical attention it requires.

Rollins filed his complaint in May 2003. This case already had 142 docket entries that fill twenty four printed pages. Prior to the filing of an answer in this action, Rollins

filed five motions to amend his complaint. (Docket No. 11, 13, 15, 28 & 49.) Rollins then filed three further “amended complaints” (Docket Nos. 129, 131 & 133) that I ordered stricken (Docket Nos.126, 130, 132 & 134.).

First, Rollins seeks to amend his complaint to name Officer Mank alleging that on February 25, 2004, Rollins witnessed Mank “wildly throwing fecal and urine into [Rollins’s] cell” and that Mank distributed the biohazard all over Rollins’s personal and state-issued property. When Rollins immediately attempted to grieve the matter, prison officials refused to process the grievance. (Docket No. 126.) Defense counsel filed an objection to this motion on the grounds that this claim is unrelated to the underlying dispute. (Docket No. 135.) In a reiteration of this motion, Rollins further implicates five other individuals involved in this claim: Sergeant Roberts, Sergeant Abbots, Sergeant Ponsant, Unit Manager Fowal, and Captain Doe. He explains that his efforts to get a replacement of his state issued clothes were rebuffed. And, Rollins complains, when an inmate was called to clean-up the mess in Rollins’s cell he was issued a white anti-bio-hazardous-waste suit, gloves, and a face mask. He alleges that Mank has an active history of abuse against Rollins and Rollins has even filed a protection from abuse application in the state courts and grievances with the prison officials. Based on vengeful comments Mank has made regarding the pending case Rollins believes it is appropriate to add Mank as a defendant at this juncture. (Docket No. 137.)

Second, Rollins seeks leave to amend his complaint, stating that events have occurred since he filed his complaint that are similar in nature to the violations that he alleged in his original complaint. In this amendment he asserts that Prison Health Services (PHS) has no integral or unitary institutional structure for the administration and

delivery of health care services, a lack that has prevented Rollins from receiving adequate medical treatment for seven consecutive months. He describes the provision of services as chaotic and isolated. Rollins then turns to alleging that his rights under the Americans with Disability Act (ADA) have been violated due to PHS's failure to properly test, treat or educate Rollins. Rollins seeks certification of a class action and would like to represent the class. (Docket No. 136.) Defense counsel has objected to the amendment of Rollins's complaint to interject a new legal theory into the action. (Docket No. 139.)

Third, Rollins again alleges that events have occurred since the filing of his complaint that are similar in nature to those underlying his action. However, this amendment only sets forth legal standards for constitutional violations and conclusory allegations that deficiencies in Rollins's treatment over the course of seven-months (the same time increment identified in his initial complaint) meet those standards. (Docket No. 138.)

Fourth, and finally, Rollins seeks to file a supplemental complaint. This amendment seems targeted at adding a claim that the defendants are violating his rights under the Equal Protection clause of the United States Constitution as they are discriminating against Rollins due to his race. (Docket No. 141.)

In his response to the defendants' opposition to the proposed amendment, Rollins contends that his amendments are in fact related, listing his claims. (Docket Nos. 140 & 142.)¹ He also clarifies that his complaint concerns the provision of health care in the

¹ He identifies his eight claims as: Racial harassment, discrimination based on race, denial of equal protection of the law, retaliation by government employees against inmate for constitutional right to petition government, forbidden cruel and unusual punishment in general and in law, conditions of confinement, unnecessary and wanton infliction of pain, and government employee intentionally caused an excessive risk to Rollins's health and safety.

year 2002, that he is disabled within the meaning of ADA, and asserts that the Court has not adequately addressed his request for injunctive relief. (Docket No. 142.)

With respect to amendments to complaints, Federal Rule of Civil Procedure provides that “a party may amend the party’s pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a). With respect to supplemental pleadings, subsection (d) of that rule provides:

Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefore[e].

Fed. R. Civ. P. 15(d). At least one court in the First Circuit has concluded that the standards under either subsection are fungible, see Sheppard v. River Valley Fitness One, L.P., 2002 WL 197976 (D.N.H.2002), while another has concluded subdivision (d) gives a Court greater leeway to rein in the pleadings, because it does not contain the subsection (a) mandate that “leave shall be freely given,” see New Balance Athletic Shoe, Inc. v. Puma USA, Inc. 118 F.R.D. 17, 19 (D.Mass.1987).

I conclude, that even under a standard that provides that leave to supplement and amend “shall be freely given” justice requires at this late stage of the game that I deny these most recent efforts by Rollins to add new events and legal theories to his suit. With respect to the attempt to name Officer Mank and sue for the February 2004 feces and urine spewing conduct, I conclude that this is not sufficiently related to Rollins’s denial of adequate medical treatment claims so as to justify subjecting the current defendants to

further delay and pleading burdens. This same holds true for the allegations relating to the other individuals identified by Rollins as responding to this incident.

I also conclude that, while I might have entertained these amendments at an earlier stage, that Rollins's attempts to plead claims under the ADA and the Equal Protection clause (beyond the perimeters of the current complaint as previously amended) cannot now be embraced. I can identify no reason why Rollins could not have fully pled these legal theories at the commencement of his suit or prior to the filing of responsive pleading by these defendants. Facially these amendments are not efforts by Rollins to conform his pleading to evidence only recently unearthed. Adding such claims at this late stage, to the extent they were not raised by the earlier amended complaints, will prejudice the defendants who have joined issues with Rollins unaware that he was proceeding against them on these theories and who are operating under a scheduling order with impending deadlines (Docket No. 121). Such a delay in the resolution of this suit -- which, principally because of Rollins's penchant for filing motions, has become difficult and time consuming to manage -- would be unfair to the defendants. See Structural Systems, Inc. v. Sulfaro, 692 F. Supp. 34, 36 (D.Mass.1988).

With respect to the parts of these motions that reiterate the legal theories under which Rollins is proceeding and restate his complaint that PHS does not have an integral and unitary structure to fulfill its healthcare responsibilities, Rollins's efforts to amend are redundant and futile. Vis-à-vis Rollins's request for class certification, Rollins is pro se and cannot represent other inmates. See, e.g., Marr v. Michigan, 89 F.3d 834, 834 (6th Cir.1996); Phillips v. Tobin, 548 F.2d 408, 413 (2nd Cir. 1976); Oxendine v. Williams, 509 F.2d 1405, 1407 (4th Cir.1975). Finally, to the extent Rollins is asking

me to revisit my order denying him injunctive relief, I decline to do so and reiterate that Rollins did not demonstrate his entitlement to this remedy. (See Docket No. 111.)

As Rollins concedes in his reply to the defendants' opposition to these amendments, this is a case about the constitutional adequacy of the health care he received in 2002 at the Maine State Prison. I appreciate the fact that Rollins may still not be satisfied with the treatment he is currently receiving but the filing of a prison condition law suit is not a "rolling start" that permits for a complaint to be indefinitely amended to address each complaint about prison conditions that arises while the initial dispute is still unresolved.

Conclusion

For the reasons stated above, I **DENY** Rollins's motions to amend/supplement his pleadings at Docket Numbers 126, 136, 137, 138, and 141. This case will proceed on the complaint as previously amended. No further motions to amend or supplement by Rollins will be considered by this Court.

CERTIFICATE

A. The Clerk shall submit forthwith copies of this order to the parties in this case.

B. The parties shall submit any objections to this order to the clerk in accordance with Fed. R. Civ. P. 72.

So Ordered.

Dated April 21, 2004

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

ROLLINS v. MAGNUSSON et al
Assigned to: JUDGE JOHN A. WOODCOCK JR.
Referred to: MAG. JUDGE MARGARET J.
KRAVCHUK
Demand: \$
Lead Docket: None
Related Cases: None
Case in other court: None
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 05/09/03
Jury Demand: Both
Nature of Suit: 550 Prisoner: Civil
Rights
Jurisdiction: Federal Question

Plaintiff

LARRY DEAN ROLLINS

represented by **LARRY DEAN ROLLINS**
MAINE STATE PRISON
807 CUSHING ROAD
WARREN, ME 04864
PRO SE

V.

Defendant

MARTIN A MAGNUSSON

represented by **DIANE SLEEK**
ASSISTANT ATTORNEY
GENERAL
STATE HOUSE STATION 6
AUGUSTA, ME 04333-0006
626-8800
Email: diane.sleek@maine.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JEFFREY D MERRILL

represented by **DIANE SLEEK**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

LUCIA ELDER

represented by **JAMES E. FORTIN**
DOUGLAS, DENHAM,
BUCCINA & ERNST
103 EXCHANGE STREET
P.O. BOX 7108

PORTLAND, ME 4112-7108
207-774-1486
Email: jfortin@dougden.com
ATTORNEY TO BE NOTICED

HOLLY HOWIESON

represented by **DIANE SLEEK**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

CELIA ENGLANDER

represented by **JAMES E. FORTIN**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

MATTHEW TURNER

CAROL PHILLIPS

represented by **JAMES E. FORTIN**
(See above for address)
TERMINATED: 10/20/2003
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

LANA SAVAGE

represented by **JAMES E. FORTIN**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

SUZANNE GUNSTON

represented by **JAMES E. FORTIN**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

RICK LALIBERTY

represented by **JAMES E. FORTIN**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

DIANE SLEEK
(See above for address)
ATTORNEY TO BE NOTICED

ANNE LEIDINGER

represented by **JAMES E. FORTIN**
(See above for address)
ATTORNEY TO BE NOTICED

PAM BABB

represented by **JAMES E. FORTIN**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

BRIAN CASTONGUAY

represented by **DIANE SLEEK**
(See above for address)
ATTORNEY TO BE NOTICED

ANNE MARIE HALCO

ERIC JURA

represented by **DIANE SLEEK**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

GARY A SANDERS

TERMINATED: 08/11/2003

DALE EMERSON

represented by **DIANE SLEEK**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

SAM WALTON

represented by **DIANE SLEEK**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

NICHOLS, OFFICER

represented by **DIANE SLEEK**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

BEAUPRE, OFFICER

represented by **DIANE SLEEK**

(See above for address)
ATTORNEY TO BE NOTICED

ENGSTFELD, OFFICER

represented by **DIANE SLEEK**
(See above for address)
ATTORNEY TO BE NOTICED

MARY DECOFF

GERALD F BOYLE
TERMINATED: 10/22/2003

JOHN DOE ROGERS

represented by **DIANE SLEEK**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

GARY SANDERSON

represented by **DIANE SLEEK**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

LINDA PROVENCHER

represented by **DIANE SLEEK**
(See above for address)
ATTORNEY TO BE NOTICED

**JOHN DOE, CEO of the Prison
Health Service, Inc.**
TERMINATED: 03/10/2004

**PRISON HEALTH SERVICES,
INC**

represented by **JAMES E. FORTIN**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED