

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

DAVID J. WIDI, JR., )  
 )  
 Plaintiff, )  
 )  
 v. ) 2:12-cv-00188-JAW  
 )  
 PAUL MCNEIL, et al., )  
 )  
 Defendants. )

**ORDER DISMISSING PLAINTIFF’S MOTION FOR RELIEF PURSUANT TO  
FEDERAL RULE OF CIVIL PROCEDURE 54(b), DENYING IN PART AND  
GRANTING IN PART PLAINTIFF’S MOTION FOR RECONSIDERATION,  
DENYING REQUEST FOR STATUS CONFERENCE AND GRANTING  
MOTION TO EXTEND TIME**

The Court again seeks to untangle the procedural snarl created by the Plaintiff’s relentless pro se filings. It dismisses his motion for relief pursuant to Federal Rule of Civil Procedure 54(b) because it is a misnamed serial motion for reconsideration and the Court’s previous Order deserves finality. It denies his motion to amend the Amended Complaint as to the served Defendants, but grants his motion to reconsider its earlier Order as to the unserved Defendants and will separately complete the screening process under 28 U.S.C. § 1915A. It grants his motion to extend time to file a motion for reconsideration and it denies his request for a status conference.

**I. PROCEDURAL BACKGROUND**

On December 2, 2014, the Court of Appeals for the First Circuit issued its mandate in accordance with its judgment of October 8, 2014. *Mandate* (ECF No. 266);

*J.* (ECF No. 259). This Court turns to the motions currently pending in this case. On October 14, 2014, Mr. Widi filed a motion for enlargement of time to file a motion for reconsideration. *Mot. for Enlargement of Time to File for Recons.* (ECF No. 260). On October 20, 2014, Mr. Widi filed a motion for reconsideration of the Court's Order denying his motion for leave to file a second amended complaint and requests a status conference. *Mot. for Recons. of Order Denying Leave to File Second Am. Compl. and Req. for Status Conference* (ECF No. 261) (*Mot. for Recons. of Order Denying Leave*). On November 10, 2014, Defendant Paul McNeil filed an opposition to Mr. Widi's motion for reconsideration of the Court's denial of Mr. Widi's motion for leave to amend the amended complaint. *McNeil's Opp'n to Pl.'s Mot. for Leave to Amend* (ECF No. 265).

On October 24, 2014, Mr. Widi filed a motion for relief of the Court's October 7, 2014 Order in which the Court denied multiple motions for reconsideration of its April 21, 2014 Order granting summary judgment to Defendants Denis R. Clark and Michael Lyon. *Mot. for Relief Pursuant to Fed. R. Civ. P. 54(b)* (ECF No. 262) (*Mot. for Relief*). On October 27, 2014, Defendants Clark and Lyon waived response to Mr. Widi's Rule 54(b) motion. *Waiver of Resp. to Pl.'s Mot. for Relief Pursuant to F.R. Civ. P., Rule 54(b)* (ECF No. 263). On November 6, 2014, Mr. Widi filed a reply. *Reply to Defs.' Resp. to Mot. for Relief Pursuant to Fed. R. Civ. P. 54(b)* (ECF No. 264).

## **II. THE MOTION TO EXTEND TIME**

The Court grants Mr. Widi's motion to extend time within which to file his motion for reconsideration of the denial of his motion to amend the Amended

Complaint. Mr. Widi filed his motion for reconsideration on October 20, 2014, and Defendant McNeil responded on November 10, 2014. Accordingly, there is no harm in granting the motion for extension and docketing both the motion and response.

### III. THE MOTION FOR RECONSIDERATION

#### A. Background

David J. Widi, Jr. filed a complaint in this matter on June 13, 2012 against approximately thirty-nine defendants, alleging that a number of these Defendants had conspired to deprive him of his civil rights. *Compl.* (ECF No. 1). His case has now been pending for over two years. On July 13, 2012, the Magistrate Judge screened the Complaint and ordered Special Agent Paul McNeil, TD Banknorth, N.A. (TD Bank), Special Agent Kevin Curran, Probation Agent Denis Clark, and Probation Agent Michael Lyon to be served. *Order for Serv. After Screening Compl. Pursuant to 28 U.S.C. § 1915A* (ECF No. 6).

After he filed his Complaint, Mr. Widi filed an amended complaint on August 2, 2012. *Am. Compl.* (ECF No. 15) (*First Am. Compl.*). This Amended Complaint became the operative pleading. *See Millay v. Surry Sch. Dep't*, 584 F. Supp. 2d 219, 226 (D. Me. 2008). On November 18, 2013, Mr. Widi filed a second amended complaint, and on November 19, 2013, the Magistrate Judge struck the Second Amended Complaint because Mr. Widi had failed to file a motion for leave to file the Second Amended Complaint. *Second Am. Compl.* (ECF No. 191); *Order* (ECF No. 192). On November 29, 2013, Mr. Widi filed a motion for leave to file the Second Amended Complaint. *Mot. for Leave to Amend* (ECF No. 198). On December 13,

2013, Mr. Widi filed a motion for reconsideration of the Order striking his proposed Second Amended Complaint. *Mot. for Recons.* (ECF No. 197). On September 23, 2014, the Court issued an order dismissing his motion for reconsideration and denying his motion to amend the Amended Complaint. *Order Dismissing Pl.’s Mot. for Recons. and Denying Pl.’s Mot. to Amend Am. Compl.* (ECF No. 255) (*Ct. Order*). What is now before the Court is Mr. Widi’s motion to reconsider the Order denying his motion to amend the Amended Complaint. *Mot. for Recons. of Order Denying Leave*.

#### **B. David J. Widi, Jr.’s Position**

In Mr. Widi’s motion to amend the Amended Complaint, he explained the need for the Second Amended Complaint as to Defendants Curran, Clark, Lyon, ATF, EOUSA, OIP, TD Bank, and McNeil. *Mot. for Leave to Amend*. He stated that the Second Amended Complaint “more accurately pleads [Defendant] Curran’s role in the events that resulted in this cause of action and clarifies the allegations.” *Id.* at 3. As regarding Defendants Clark and Lyon, Mr. Widi claimed that the Second Amended Complaint “provides a more detailed account of the allegations against the Maine Probation Officers and the theories of liability.” *Id.* Regarding Defendants ATF, EOUSA, and OIP, Mr. Widi said that the “Second Amended Complaint merely explains the functions between the agencies and the crux of the allegation that the agencies have improperly withheld records remains the same.” *Id.* He concluded that “the amendment does not affect these defendants.” *Id.* at 4. Regarding TD Bank, Mr. Widi explained that he has made new allegations and that he “expects this Court

will reconsider it[]s untenable positions in the Order for Summary Judgment.” *Id.* Regarding Defendant McNeil, he wrote that the Second Amended Complaint “clarifies McNeil’s role in the precursor events and provides more th[o]roughly detailed allegations.” *Id.* at 5. Mr. Widi also said that the Second Amended Complaint applies “to the defendants who were held in abeyance” and cures “potential deficiencies to those defendants.” *Id.* at 6.

### **C. The Court Order**

The Court denied the motion to amend the Amended Complaint. *Ct. Order.* Regarding the Defendants who have been served, the Court noted that it had granted a motion to dismiss as to Defendant McNeil, *Order Denying Pl.’s Mot. to Stay; Denying Pl.’s Mot. to Strike; and Granting Def. McNeil’s Mot. to Dismiss* (ECF No. 170), had granted TD Bank’s motion for summary judgment, *Order Granting Mot. for Summ. J. by Def. TD Bank; Denying Mot. to Strike; Denying Disc.; and Dismissing Without Prejudice Mot. for Serv. of Process* (ECF No. 171), and had granted Defendant Clark and Lyon’s motion for summary judgment, *Order Granting the Renewed Mot. for Summ. J. by Defs. Clark and Lyon* (ECF No. 236). *Ct. Order* at 3-4. As the Court explained in its Order, to the extent the Second Amended Complaint “includes dismissed parties, it would only produce confusion if the Second Amended Complaint became the operative pleading.” *Id.* at 6.

Four served Defendants were potentially affected by the motion for leave to amend the Amended Complaint. First, as regards ATF, EOUSA, and OIP, the Court pointed out that Mr. Widi said that the amendment “does not affect these

defendants.” *Id.* at 7 (quoting *Mot. for Leave to Amend* at 4). The Court therefore refused to allow the amendment as to those Defendants. *Id.* Second, as regards Special Agent Kevin Curran, the Court concluded that Mr. Widi had “failed to demonstrate why it is necessary to allege the additional facts against Special Agent Curran.” *Id.* The Court declined to allow the amendment on that ground. *Id.*

#### **D. The Motion for Reconsideration**

As regards the served Defendants, Mr. Widi explains that “because the Second Amended Complaint would completely supersede the Amended Complaint,” he is worried that if he failed to include the dismissed Defendants, he would be seen as abandoning his claims against them and would be held to constitute a waiver. *Mot. for Recons. of Order Denying Leave* at 2. He cites *Millay v. Surry School Department* as authority. *Id.* He misreads *Millay*. In *Millay*, the plaintiff demanded a preliminary injunction in her original complaint but did not include that demand in her amended complaint. 584 F. Supp. 2d at 226-27. The Court discussed the difference between a supplemented pleading and an amended pleading and noted that an amended complaint “completely supersedes [an] original complaint.” *Id.* at 226 (quoting *Kolling v. Am. Power Conversion Corp.*, 347 F.3d 11, 16 (1st Cir. 2003)). But as the plaintiff in *Millay* was pro se, the Court considered the request for a preliminary injunction anyway. *Id.* at 226-27.

Here, the Court ruled on the viability of Mr. Widi’s claims against Defendants Curran, Clark, Lyon, ATF, EOUSA, OIP, TD Bank, and McNeil based on the allegations in the First Amended Complaint as set forth in the motions for summary

judgment. If the Court has erred in its determinations, Mr. Widi may seek appellate review of those decisions. However, to preserve his right of appeal, it is not necessary for him to restate all of the dismissed allegations in an amended complaint, and to the extent he wishes to add new allegations against Defendants who have already been dismissed, he is too late.

Mr. Widi has a point, however, about the status of the Defendants who have never been formally screened. Under 28 U.S.C. § 1915A, a court “shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.” 28 U.S.C. § 1915A(a). On July 13, 2012, the Magistrate Judge performed such a screening and authorized the Clerk to prepare summonses against Defendants Curran, Clark, Lyon, ATF, EOUSA, OIP, TD Bank, and McNeil. *Order for Serv. After Screening Compl. Pursuant to 28 U.S.C. § 1915A* at 1.

Regarding the more than thirty other named Defendants, the Magistrate Judge observed:

Other than the claims associated with these five defendants I cannot presently identify any cognizable claims that warrant service of the complaint and that would not be subject to summary dismissal. However, I am not issuing a recommendation regarding the dismissal of the other putative defendants and claims at this juncture. Instead, I am simply holding those aspects of the case in abeyance until the five principal defendants have been served and filed any initial motions they intend to file. Following consideration of those matters I will make a further determination regarding service upon other defendants and whether any other claims have been sufficiently set forth under *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

*Id.* at 2.<sup>1</sup> Presumably, the Magistrate Judge could not have foreseen that over two years after this Order, the parties would still be resolving dispositive motions on the served Defendants.

However, the Court agrees with Mr. Widi that the piecemeal nature of this litigation is not the most efficient model and that the Court should perform the screening duty on the unscreened Defendants. The Court will perform a screening review under 28 U.S.C. § 1915A for the unserved Defendants. In performing this review, the Court will be able to determine whether the differences between allegations in the First and Second Amended Complaints make a difference in this analysis. If there is no difference, the Court may deny the motion to amend the Amended Complaint, and if there is a difference, the Court may grant it or grant it as to certain Defendants only.

With this said, the Court denies the motion to reconsider the denial of the motion to amend the Amended Complaint to the extent that it seeks to amend claims that have already been decided against Mr. Widi.

#### **IV. THE MOTION FOR RELIEF PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 54(b)**

##### **A. The Court's Order and Motions for Reconsideration**

In Count XIII of his First Amended Complaint, Mr. Widi alleged that Probation Officers Clark and Lyon had performed a warrantless search of his residence in violation of his Fourth, Fifth, and Fourteenth Amendment rights. *First Am. Compl.*

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<sup>1</sup> Although the Magistrate Judge referred to service of “five defendants,” this grouping included ATF, EOUSA, and OIP.

at 18-19. On February 19, 2014, Defendants Clark and Lyon re-filed a motion for summary judgment. *Second Mot. of Defs. Denis Clark and Michael Lyon for Summ. J.* (ECF No. 214). After the motion was briefed by the parties, on April 21, 2014, the Court concluded that Mr. Widi had consented to a search of his residence and granted the motion for summary judgment in favor of Defendants Clark and Lyon. *Order Granting the Renewed Mot. for Summ. J. by Defs. Clark and Lyon* at 20.

On May 12, 2014, Mr. Widi moved for reconsideration. *Mot. for Recons. of Order Granting Summ. J. to Defs. Clark and Lyon* (ECF No. 242). Defendants Clark and Lyon filed their opposition on May 22, 2014. *Resp. in Opp'n to Mot. for Recons. of Summ. J. Order* (ECF No. 244). Mr. Widi replied on June 9, 2014. *Reply to Opp'n of Mot. for Recons. of Summ. J. Order* (ECF No. 245). On July 25, 2014, Mr. Widi filed a supplemental motion for reconsideration and a request for discovery. *Supplemental Mot. for Recons. Under Fed. R. Civ. P. 59(e) and 60(b) with accompanying Req. for Disc. Order* (ECF No. 246) (*First Supplemental Mot. for Recons.*). On August 8, 2014, Defendants Clark and Lyon filed an opposition. *Opp'n to Pl.'s Supplemental Mot. for Recons.* (ECF No. 247). Mr. Widi replied on August 25, 2014. *Reply to Defs.' Opp'n to Supplemental Mot. for Recons.* (ECF No. 250).

On August 14, 2014, Mr. Widi filed a second supplemental motion for reconsideration. *Second Supplemental Mot. for Recons. Under Fed. R. Civ. P. 59(e) and 60(b)* (ECF No. 248). On August 15, 2014, Defendants Clark and Lyon waived the right to respond to the second supplemental motion. *Waiver of Resp. to Pl.'s*

*Second Supplemental Mot. for Recons.* (ECF No. 249). On September 5, 2014, Mr. Widi replied. *Pl.'s Reply to Def[s.]' Waiver of Resp.* (ECF No. 251).

On October 7, 2014, the Court issued a twenty-eight page order, denying Mr. Widi's motions for reconsideration. *Order Denying Pl.'s Mots. for Recons.* (ECF No. 257). On October 24, 2014, Mr. Widi moved the Court to reconsider its denial of his motions for reconsideration of the Order granting the motion for summary judgment. *Mot. for Relief.* On October 27, 2014, Defendants Clark and Lyon waived response. *Waiver of Resp. to Pl.'s Mot. for Relief Pursuant to F.R. Civ. P., Rule 54(b).* On November 6, 2014, Mr. Widi replied to the Defendants' waiver. *Reply to Defs.' Resp. to Mot. for Relief Pursuant to Fed. R. Civ. P. 54(b).*

## **B. Discussion**

The Court dismisses Mr. Widi's motion for relief pursuant to Federal Rule of Civil Procedure 54(b). Rule 54(b) is not a proper vehicle for a motion for reconsideration. "The basic purpose of Rule 54(b) is to avoid the possible injustice of a delay in entering judgment on a distinctly separate claim or as to fewer than all of the parties until the final adjudication." 10 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 2654 (4th ed. 2014). The "may be revised" language of Rule 54(b) is properly viewed in the context of the purpose of the Rule and is not an invitation to endlessly attack an order on a dispositive motion. *See* FED. R. CIV. P. 54(b).

As the Court explained in its October 7, 2014 Order, the proper motion to ask for reconsideration is a motion for reconsideration. *Order Denying Pl.'s Mots. for*

*Recons.* at 11 (“Under Local Rule 7(g), a party may file a motion for reconsideration of an interlocutory order of the Court, ‘meaning a motion other than one governed by Fed. R. Civ. P. 59 or 60’”) (quoting D. ME. LOC. R. 7(g)). Mr. Widi’s Rule 54(b) motion is really a motion for reconsideration in another guise.

Properly characterized, Mr. Widi’s motion is a motion to reconsider an order denying a motion to reconsider an order granting a motion for summary judgment. To prevail on a motion for reconsideration, a party must demonstrate that the order “was based on a manifest error of fact or law.” D. ME. LOC. R. 7(g). But Local Rule 7(g) does not authorize a disappointed party to endlessly quarrel with a judicial order. Here, the Court issued a twenty-page order granting Defendants Clark and Lyon’s motion for summary judgment. *Order Granting the Renewed Mot. for Summ. J. by Defs. Clark and Lyon.* Upon Mr. Widi’s motion for reconsideration, the Court issued a twenty-eight page order, discussing his issues in detail and denying his requests for reconsideration. *Order Denying Pl.’s Mots. for Recons.* Still not satisfied, Mr. Widi filed a twenty-eight page motion, demanding a further explanation. *Mot. for Relief.*

The problem with serial motions for reconsideration is not only the absence of finality, but also, in Mr. Widi’s case, it provides an opportunity to profoundly muddle the record. One example suffices: Mr. Widi has now claimed that the Court committed a manifest error of law by extending the New Hampshire probation conditions to Maine and, conversely, by not extending the New Hampshire probation conditions to Maine. In his First Supplemental Motion for Reconsideration, Mr. Widi wrote:

Accordingly, this Court has committed a manifest error of law by extending the New Hampshire probation conditions to the defendants as they are subject to the supervision rules, regulations, and policies of the State of Maine.

*First Supplemental Mot. for Recons.* at 5-6. The Court addressed this issue by pointing out that during the motion for summary judgment process, Mr. Widi conceded that he was subject to a particular condition of probation, and therefore, the parties had agreed on the applicable probation condition. *Order Denying Pl.'s Mots. for Recons.* at 14-15. In his pending motion, Mr. Widi writes:

The State of New Hampshire agreed to transfer Mr. Widi's probation to the State of Maine, but would only do so if Mr. Widi agreed to allow two of his NH probation conditions [to] extend over to his supervision in Maine . . . . Accordingly, the form is not a "Maine probation form" but rather is a NH form meant to extend two of the conditions of Mr. Widi[s] NH probation to his supervision in Maine.

*Mot. for Relief* at 9-10. According to Mr. Widi, if the Court extended his New Hampshire probation conditions to Maine, it committed a manifest error of law, and if the Court did not extend some of his New Hampshire probation conditions to Maine, it committed a manifest error of law.

The Court has ruled. If the Court is wrong, Mr. Widi has a right to challenge the ruling on appeal to the Court of Appeals for the First Circuit. But upon losing the motion, he does not have the right to frame legal issues so that whatever the Court rules, it is wrong and he is right. The Court DISMISSES the motion for relief.

## **V. REQUEST FOR STATUS CONFERENCE**

In his motion for reconsideration of the Order denying leave to file a second amended complaint, Mr. Widi requested a status conference. *Mot. for Recons. of*

*Order Denying Leave* at 1. The Court denies that request. The Court will screen the remaining claims. Once the screening has taken place, it may be appropriate to take stock as to the case status, whether by status conference or not. But not now.

## **VI. CONCLUSION**

The Court GRANTS David J. Widi, Jr.'s Motion for Enlargement of Time to File for Reconsideration (ECF No. 260).

The Court DENIES in part and GRANTS in part David J. Widi, Jr.'s Motion for Reconsideration of Order Denying Leave to File Second Amended Complaint (ECF No. 261). It DENIES so much of the Motion as is directed to the served Defendants in this case, Defendants Special Agent Paul McNeil, TD Banknorth, N.A., Special Agent Kevin Curran, Probation Agent Denis Clark, Probation Agent Michael Lyon, ATF, EOUSA, and OIP. As regards the remaining Defendants, the Court alters its Order Dismissing Plaintiff's Motion for Reconsideration and Denying Plaintiff's Motion to Amend Amended Complaint to the extent it suggested that the unserved Defendants in this case had been screened by the Magistrate Judge and the Court will separately screen the claims against the remaining Defendants in accordance with 28 U.S.C. § 1915A.

The Court DISMISSES David J. Widi, Jr.'s Motion for Relief Pursuant to Fed. R. Civ. P. 54(b) (ECF No. 262).

The Court DENIES David J. Widi, Jr.'s Request for Status Conference (ECF No. 261).

**SO ORDERED.**

/s/ John A. Woodcock, Jr.  
JOHN A. WOODCOCK, JR.  
CHIEF UNITED STATES DISTRICT JUDGE

Dated this 10th day of December, 2014

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*TERMINATED: 09/23/2014*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**JOHN G. OSBORN**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Defendant**

**OFFICE OF INFORMATION  
POLICY**

represented by **EVAN J. ROTH**  
(See above for address)  
*TERMINATED: 09/23/2014*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**JOHN G. OSBORN**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Defendant**

**UNITED STATES OF AMERICA  
EXECUTIVE OFFICE FOR US  
ATTORNEYS**

represented by **EVAN J. ROTH**  
(See above for address)  
*TERMINATED: 09/23/2014*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**JOHN G. OSBORN**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

V.

**Notice Only Party**

**MAINE ATTORNEY GENERAL  
- NON PRISONER IFP CASES**