

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

FRANK DANIEL FOURNIER,            )  
  )  
                  Plaintiff,                    )  
  )  
                  v.                            )        1:14-cv-00351-JAW  
  )  
PAUL LEPAGE, et al.                )  
  )  
                  Defendants.                )

**ORDER ON APPEAL OF MAGISTRATE JUDGE ORDER**

On September 5, 2014, Frank Daniel Fournier, a state prisoner, filed a civil action in this Court under 42 U.S.C. § 1983 against twenty-three state of Maine Defendants in their official and personal capacities, claiming that he is being held in prison over the time imposed by his sentence. *Compl.* (ECF No. 1). On February 17, 2015, the Magistrate Judge issued a recommended decision in which he recommended that the Court grant the Defendants’ motion to dismiss and grant Mr. Fournier an opportunity to file an amended pleading to assert his habeas corpus claim in proper form. *Recommended Decision* (ECF No. 32) (*Rec. Dec.*). On March 9, 2015, Mr. Fournier objected to the Recommended Decision. *Objections to R&R* (ECF No. 34). On May 8, 2015, the Court affirmed the Recommended Decision. *Order Affirming the Recommended Decision of the Magistrate Judge Order Granting Mot. to Extend* (ECF No. 38). On May 11, 2015, judgment issued in favor of the Defendants and against Mr. Fournier. *J.* (ECF No. 40).

On June 29, 2015, Mr. Fournier filed a letter with the Court, demanding that the Court return all the money he had paid. *Letter from Frank Daniel Fournier to Clerk (June 29, 2015)* at 1 (ECF No. 43). On June 30, 2015, Mr. Fournier filed with the Court another letter, this time to Chief Judge Nancy Torresen, stating that he had been overcharged by the Court for his filing fee and demanding \$100.06, the amount of the alleged overcharge, be returned to him, and asking that the Court alert the Prison that it should stop deducting money. *Letter from Frank D. Fournier to Nancy Torresen, Chief Justice (June 30, 2015)* at 1 (ECF No. 44). This letter was characterized as a letter motion for return of filing fee. *Id.* Finally, on July 15, 2015, Mr. Fournier filed a motion for return of property, demanding return of \$101.06 in filing fees. *Mot. for Return of Property* (ECF No. 45) (*Def.'s Mot.*).

On August 24, 2015, the Magistrate Judge denied Mr. Fournier's motion for return of filing fee and his motion for return of property. *Order on Mot. for Return of Filing Fee (ECF No. 43) and Mot. for Return of Property (ECF No. 45)* (ECF No. 46) (*Magistrate Judge Order*). In his motions, Mr. Fournier claimed not only the right to be reimbursed \$101.06 that he contended the Court improperly collected as a filing fee, but he also maintained that he was entitled to receive without charge copies of all documents filed electronically with the Court on the two matters to which he was a party.<sup>1</sup> *Id.* at 1. The Magistrate Judge observed that Mr. Fournier captioned his

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<sup>1</sup> In his motions, Mr. Fournier referenced two federal filings, 1:14-cv-00351-JAW and 93-cv-221-B. *Def.'s Mots.* at 1-4. Docket number 1:14-cv-00351-JAW is the pending § 1983 action and docket number 1:93-cv-00221-GC was a petition for writ of habeas corpus that Mr. Fournier filed on September 15, 1993 and that was closed on September 21, 1994. The habeas corpus case is no longer active.

lawsuit as an “Application For Filing Complaint Under 42 U.S.C.A. § 1983, 28 U.S.C.A. § 1343(3).” *Id.* Given its caption as a civil rights action, the Magistrate Judge wrote that it was reasonable for the Court to conclude that Mr. Fournier was filing a civil rights action. *Id.* The Magistrate Judge also explained that even though the Court had granted his request for leave to proceed in forma pauperis, the Court ordered that Mr. Fournier pay the filing fee as funds in his prison account became available and that Mr. Fournier would be responsible for the entire \$350 fee. *Id.* at 1-2. The Court further advised Mr. Fournier that the matter could be dismissed if the Court determined that the claim was “frivolous, malicious, or fail[ed] to state a claim upon which relief may be granted.” *Id.* at 2 (alteration in original).

In the order, the Court directed Mr. Fournier “to notify the court . . . whether he intends to incur the cost of the filing fee and proceed with this action . . .” and that if he elected to proceed, “he shall clearly indicate in writing that he understands his obligation to pay the full \$350 filing fee as funds are available . . .” *Id.* In response, Mr. Fournier wrote the Court and stated: “Plaintiff does elect to proceed with this matter, and does understand that the obligation to pay the full \$350 filing fee as funds become available.” *Id.* (quoting *Letter from Frank Daniel Fournier to Clerk of Ct. (Oct. 1, 2014)* at 1 (ECF No. 8)). The Court rejected his claim that the \$5 filing fee for a habeas action should apply to a civil rights action and his claim that he has a right to copies without cost. *Id.* The Magistrate Judge noted that “[a]ny objections to this Order report shall be filed in accordance with Fed.R.Civ.P. 72.” *Id.*

On September 4, 2015, Mr. Fournier filed a document entitled “Appeal Order(s) ECF No. 43; ECF No. 45.” *Appeal Order(s) ECF No. 43; ECF No. 45* (ECF No. 47). The Clerk of Court interpreted this document as an attempt to directly appeal the Magistrate Judge’s Order to the Court of Appeals and forwarded the case to the First Circuit Court of Appeals for disposition. *Clerk’s Civil Certificate* (ECF No. 49). On December 18, 2015, the Court of Appeals dismissed the appeal, concluding that Mr. Fournier did not intend to appeal directly to the appellate court, but to a district court judge. *J. Ct. of Appeals* (ECF No. 51). This Court received the Court of Appeals’ mandate on January 12, 2016. *Mandate* (ECF No. 55).

Preliminarily, the Court observes that the Magistrate Judge’s August 24, 2015 Order is on a non-dispositive matter and therefore the Court is performing its review pursuant to Federal Rule of Civil Procedure 72(a) to determine whether the order is “clearly erroneous or is contrary to law.” FED. R. CIV. P. 72(a). In excess of caution, the Court has also performed a de novo review of the Magistrate Judge’s Order. If the Magistrate Judge’s Order is deemed an order requiring de novo review under Federal Rule of Civil Procedure 72(b), the result is the same.

The Court concludes that the Magistrate Judge’s August 24, 2015 Order must be affirmed. Despite his emphatic protests to the contrary, Mr. Fournier’s Complaint was clearly demarcated as an “Application for Filing Complaint Under 42 U.S.C.A. § 1983; 28 U.S.C. § 1343(3).” *Compl.* at 1. In reviewing his motions, the source of Mr. Fournier’s confusion becomes apparent. Mr. Fournier states:

“#1 document: cannot be any clearer, ***habeas corpus***. 42 § 1983”

*Def.'s Mot.* at 1. Title 42 United States Code § 1983 is not the correct citation for a habeas corpus action; it is the proper citation for a civil rights action. *See* 42 U.S.C. § 1983 (“Civil action for deprivation of rights”). Mr. Fournier filed a federal civil rights action. *Compl.* at 1.

It is true that in his Complaint, Mr. Fournier referred to a habeas corpus petition and demanded his release, but he expressly cited “CHAPTER 609 HABEAS CORPUS 14 M.R.S.A. §§ 5501 et seq., 14 § 5537, § 5545 FALSE IMPRISONMENTS.” *Id.* These are state of Maine habeas corpus statutes, not the federal statute, which is 28 U.S.C. § 2254. In recommending the dismissal of the Complaint, the Magistrate Judge carefully explained all of this to Mr. Fournier. *Rec. Dec.* at 8-9. The Magistrate Judge informed Mr. Fournier that if he wished to pursue a federal habeas corpus petition, he should file a petition on the proper form, AO 241, but that he should first consider whether he had in fact exhausted all of his state remedies. *Rec. Dec.* at 9. Accordingly, Mr. Fournier is simply incorrect when he complains that the Clerk of Court assessed the wrong filing fee. He is also incorrect that he has a legal right to force the Clerk’s Office to make copies of court documents and send them to him.

The Court AFFIRMS the Magistrate Judge’s Order on Motion for Return of Filing Fee (ECF No. 43) and Motion for Return of Property (ECF No. 45) (ECF No. 46) and DENIES Frank Daniel Fournier’s Motion for Return of Filing Fee (ECF No. 43) and his Motion for Return of Property (ECF No. 45). The Court thus OVERRULES Frank Daniel Fournier’s Appeal Order(s) ECF No. 43; ECF No. 45 (ECF No. 47). Finally, to the extent that Mr. Fournier’s June 1, 2015 letter to Chief

Judge Torresen could be considered a separate motion, the Court DENIES the motion as moot. Letter from Frank D. Fournier to Nancy Torresen, Chief Justice (June 30, 2015) (ECF No. 44).

SO ORDERED.

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

Dated this 14th day of January, 2016