

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

JERRY K. BAUSBY, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. 17-0771-CV-W-GAF-P
)	
JACKSON COUNTY DETENTION CENTER)	
)	
Defendant.)	

ORDER

Plaintiffs, who currently are confined at Jackson County Detention Center in Kansas City, Missouri, have filed *pro se* this civil action pursuant to 42 U.S.C. § 1983. Plaintiffs have moved for leave to proceed *in forma pauperis* without the prepayment of court fees or costs. Doc. 2. Only Plaintiff Bausby has submitted a copy of his inmate account statement. Doc. 3. For the reasons set forth below, Plaintiffs Cain, Yust, Weidler, Wyatt, and Moyer are severed and dismissed from this case, and Plaintiff Bausby must submit a superseding amended complaint if he wishes to proceed with this case

I. Plaintiffs Cain, Yust, Weidler, Wyatt, and Moyer are severed and dismissed.

As to whether joinder of Plaintiffs is appropriate , numerous federal courts examining the impact of multiple plaintiffs attempting to join together in a single lawsuit have ruled that prisoner plaintiffs should not be allowed to undermine the statutory requirement that each plaintiff must pay the entire \$350.00 imposed by 28 U.S.C. § 1915(b)(1) when they file a case in federal court and that “the impracticalities inherent in multiple-prisoner litigation mitigate against the permissive joinder allowed by [Fed. R. Civ. P.] 20.” *Boyd v. Marion Cnty. Law Enforcement Ctr.*, 2010 WL 4681237, *1 (E.D. Mo. Nov. 10, 2010); *see also Lilly v. Ozmint*, 2007 WL 2021874, *1 (D.S.C. July 6, 2007); *Wasko v. Allen Cnty. Jail*, 2006 WL 978956 (N.D. Ind. 2006); *Swenson v.*

MacDonald, 2006 WL 240233, *2-4 (D. Mont. Jan. 30, 2006). Furthermore, only Plaintiff Bausby has signed the complaint and has supported his request to proceed *in forma pauperis* with a copy of his inmate account statement. Doc. 1, p. 7; Doc. 3. As a result, joinder is not appropriate in this case, and this Court will sever and dismiss Plaintiffs Cain, Yust, Weidler, Wyatt, and Moyer. If these Plaintiffs wish to pursue relief in this Court, they must file separate cases and pay separate filing fees.

II. Plaintiff Bausby is advised of the filing fee.

Pursuant to 28 U.S.C. § 1915(b)(1), Plaintiff Bausby must pay the full \$350.00 filing fee in this civil action. See *In re Tyler*, 110 F. 3d 528, 529-30 (8th Cir. 1997) (under Prison Litigation Reform Act, prisoners are responsible for filing fees the moment a civil action is filed). If granted leave to proceed *in forma pauperis*, Plaintiff Bausby is entitled to pay the filing fee over time through the payment of an initial partial filing fee to be assessed by the court under 28 U.S.C. § 1915(b)(1) and/or through periodic payments from Plaintiff's inmate trust fund account as authorized in 28 U.S.C. § 1915(b)(2).

Plaintiff Bausby will be granted leave to proceed *in forma papueris*. A review of Plaintiff's inmate account reveals that Plaintiff does not have sufficient funds to pay an initial partial filing fee at this time. Therefore, **if Plaintiff files a superseding amended complaint as set forth below, this Court will require Plaintiff to pay the full \$350.00 filing fee in this case by ordering Plaintiff's custodian to deduct periodic payments from Plaintiff's inmate account pursuant to 28 U.S.C. § 1915(b)(2).**

III. Plaintiff Bausby must submit a superseding amended complaint.

Due to insufficiencies in Plaintiff Bausby's present complaint, Plaintiff Bausby must file a superseding amended complaint as set forth below. To state a claim under Section 1983, "a plaintiff must plead that each Government official defendant, through the official's own individual actions, has violated the Constitution." *Ashcroft v. Iqbal*, 556 U.S.662, 676 (2009). A defendant must have

been personally involved in the deprivation of plaintiff's rights to be liable, *Martin v. Sergeant*, 780 F.2d 1334, 1337 (8th Cir. 1985), and pleadings must offer more than labels and conclusions; formulaic recitations of the elements of a cause of action are not sufficient. *Iqbal*, 556 U.S. at 678. A municipal jail or sheriff's department is not a cognizable legal entity, or person, subject to suit under § 1983, but is simply a subdivision of city government. See *Ketchum v. City of West Memphis*, 974 F.2d 81, 82 (8th Cir. 1992); *Diggs v. City of Osceola*, 270 Fed. Appx. 469, at *1 (8th Cir. 2008).

While *pro se* claims are to be liberally construed, see *Haines v. Kerner*, 404 U.S. 519 (1972), Plaintiff Bausby's assertions in this case lack the requisite specificity. See *Ellingburg v. King*, 490 F.2d 1270, 1271 (8th Cir. 1974). Plaintiff Bausby does not allege sufficient individual actions by specific government officials that caused him personal injury. Instead, Plaintiff Bausby merely names the Jackson County Detention Center as the sole Defendant in this case and raises issues concerning hygiene in the jail. Doc. 1, pp. 1, 4-7. As set forth above, the Jackson County Detention Center is not a cognizable legal entity or person subject to suit under § 1983.

Even if Plaintiff had named Jackson County, Missouri, as a Defendant, an entity of local government may be held liable under § 1983 only for acts by its officials or employees that implement a governmental custom or policy but may not be held vicariously liable for unconstitutional acts by such employees. *Monell v. Dep't of Social Servs. of the City of New York*, 436 U.S. 658, 691 (1978); *Scheeler v. City of St. Cloud*, 402 F.3d 826, 832 (8th Cir. 2005). For a local entity to be liable under a custom or policy, there must be a deprivation of a constitutional right and that deprivation must be the result of the local entity's policy or the policy of a policy maker acting under color of state law. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480-83 (1986); see also *City of St. Louis v. Prapotnik*, 485 U.S. 112, 121-31 (1988) ("The city cannot be held liable under § 1983 unless respondent proved the existence of an unconstitutional municipal policy."). Plaintiff

does not currently state a custom or policy of Jackson County, Missouri, that has violated his constitutional rights.

As a result, Plaintiff Bausby is directed to file a superseding amended complaint in which he sets out sufficient facts to show exactly **who** is involved in his claims and **what** each individual Defendant **specifically did or failed to do** in violation of Plaintiff Bausby's federally protected rights. In his amended complaint, Plaintiff Bausby should include all of his allegations against every defendant he is suing in this case. Any claims or defendants not specifically set forth in the amended complaint will be deemed to have been abandoned. If Plaintiff Bausby seeks to proceed with this case, he must file a superseding amended complaint, or this case will be dismissed pursuant to Fed. R. Civ. P. 41(b).

Accordingly, it is **ORDERED** that:

- (1) Plaintiffs Cain, Yust, Weidler, Wyatt, and Moyer are severed and dismissed from this case;
- (2) Plaintiff Bausby is granted provisional leave to proceed *in forma pauperis*;
- (3) the Clerk of the Court is directed to send Plaintiff Bausby another set of civil rights forms for his use in filing an amended complaint;
- (4) Plaintiff Bausby is directed to file a superseding amended complaint, as specifically discussed herein; and
- (5) Plaintiff Bausby's failure to amend as directed, on or before October 18, 2017, will result in the dismissal of this case without further notice.

/s/ Gary A. Fenner
GARY A. FENNER
UNITED STATES DISTRICT JUDGE

Dated: September 18, 2017.

