

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CLARENCE AUSTIN,

Petitioner,

v.

DANE COUNTY JAIL,

Respondent.

ORDER

08-cv-652-bbc

This is a proposed civil action for monetary relief, brought under 42 U.S.C. § 1983. Petitioner, a former inmate at the Dane County jail, asks for leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. From the financial affidavit petitioner has given the court, I conclude that petitioner is unable to prepay the fee for filing this lawsuit.

However, before petitioner may proceed in forma pauperis, I must determine whether his action is frivolous or malicious, fails to state a claim on which relief may be granted or seeks money damages against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972). Unfortunately, even under a generous reading of petitioner's complaint, I must deny him leave to proceed

in forma pauperis because the Dane County jail is not a “person” capable of being sued under § 1983.

Petitioner’s complaint reads in part as follows:

I was made to eat in the form of food roaches, rat’s, spider’s manure corp’s etc bread soup and was made to sit in a cell for 24 hr a day and night with any of my rights violated I constantly requested to talk to mental health that I did while they look on the herassment got more gruesome ugly with torture’s methoes there insane treatment worst towar’s Clarence A. Austin . . .

(Dkt. #1, misspellings in original). This complaint is very similar to petitioner’s earlier complaints in Austin v. Dane County Jail, 08-cv-280-bbc and Austin v. Dane County Jail, 08-cv-180-bbc. I denied petitioner leave to proceed in those previous cases because, as in the current case, the respondents in those cases were not proper respondents in a case brought under 42 U.S.C. § 1983. Liability under § 1983 attaches to persons who “under color of any statute ordinance, regulation, custom, or usage” of state power deprive a citizen of any right under the Constitution or federal law. Will v. Michigan Department of State Police, 491 U.S. 58, 66-67 (1989); Witte v. Wisconsin Department of Corrections, 434 F.3d 1031, 1036 (7th Cir. 2006). As I stated in petitioner’s previous cases, the Dane County jail is not a “person” that may be sued under § 1983. See also Powell v. Cook County Jail, 814 F.Supp. 757, 758 (N.D. Ill. 1993). Therefore I must deny petitioner leave to proceed in forma pauperis. Petitioner should be aware that these repeated attempts to

sue an entity that cannot be sued under § 1983 waste judicial resources. In an effort to avoid further waste of these resources, I am directing the clerk of court to route directly to chambers without docketing any further pleadings petitioner files in this court. If the pleading is a proper pleading suing an entity that may be sued in federal court, I will return it to the clerk's office with instructions to open a new file. If, however, I find from my review of the filing that petitioner is persisting in his attempt to sue the Dane County Jail, the pleading will be placed in a miscellaneous file and given no consideration.

ORDER

IT IS ORDERED that:

1. Petitioner Clarence Austin's request for leave to proceed in forma pauperis is DENIED and this case is DISMISSED.
2. The clerk of court is directed to close the file.

Entered this 17th day of November, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge