

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

NOV 30 2017

JEFFREY P. COLWELL
CLERK

Civil Action No. 17-cv-00884-STV/GPG

CHAYCE AARON ANDERSON,

Plaintiff,

v.

CARA BOXBERGER,

JASON SHUTTERS,

Defendant.

Mr. Anderson's REPLY in support of the MOTION TO AMEND the "AMENDED PRISONER COMPLAINT" in compliance with Federal Rule of Civil Procedure #15.

1. The original §1983 Civil Rights Lawsuit was formally filed on Wednesday, April 12th, 2017.
2. The original §1983 Civil Rights Lawsuit was Court-Ordered to be amended within 30-days. Mr. Anderson complied, filing the Amended Prisoner Complaint (A.P.C.) by the May 11th Deadline.
3. The A.P.C. was filed under "undue durress" due to Mr. Anderson's transfer to Denver Receiving and Diagnostic Center (D.R.D.C.) on Monday, April 24th, 2017, and subsequent transfer to Colorado Territorial Correctional Facility / Cell House 5 (C.T.C.F. / C.H.5) on Tuesday, May 2nd, 2017. These two original transfers occurred during the 30-day window.

Mr. Anderson's REPLY (continued).

4. It is pertinent to inform this Honorable Court that at D.R.D.C., Mr. Anderson was deprived of blank paper, legal materials, and access to a law library. This also happened at C.H.5. This created an undue hardship. As well, C.H.5 at C.T.C.F. is a 140 inmate holding cell, also known as a "Court-Transport Unit," with open bar cells with extremely close proximity. For the Court's reference, C.H.5 is not considered by C.D.O.C. as a "permanent housing assignment," but rather only a facility-to-facility transitional living unit. The living environment was unduly loud, distressing, and distracting. This created an additional undue hardship. Both of these events were out of Mr. Anderson's control. Mr. Anderson notified the respective Court immediately of the transfers, including notice of the undue duress or undue hardships with formal legal letters.

5. The following additional facility transfers occurred during the production of a "Second Amended Prisoner Complaint (S.A.P.C.)" (offered as a chronological reference chart for the Court, prepared to the best of Mr. Anderson's ability in regard to his legal record taking):

A. Monday, May 15th, 2017 - xfer to Crowley County
Correctional Facility

B. Monday, May 22nd, 2017 - xfer to C.T.C.F. /C.H.5 #2

C. Wednesday, May 31st, 2017 - xfer to Bent County
Correctional Facility

D. Tuesday, June 6th, 2017 - xfer on writ to Larimer
County Detention Center #1

E. Wednesday, June 28th, 2017 - xfer to Bent County Correctional Facility

F. Wednesday, July 12th, 2017 - xfer to C.T.C.F. /C.H.5 #3

Mr. Anderson's REPLY (continued).

G. Monday, July 31st, 2017 - xfer to Arkansas Valley
Correctional Facility

H. Wednesday, August 23rd, 2017 - xfer on writ to Larimer
County Detention Center #2

I. During the week of Monday, - xfer to Arkansas Valley
August 28th, 2017 Correctional Facility

J. Friday, October 6th, 2017 - xfer on writ to Larimer
County Detention Center #3

(Pending xfer back to A.V.C.F.)

(Next Scheduled Writ - January 12th, 2017 to L.C.D.C. #4).

6. These additional facility transfers total 10, including the original 2, makes a cumulative total of a dozen facility transfers since the original filing. Each transfer individually, and all of the transfers collectively, have caused an undue hardship on Mr. Anderson's ability to legally represent himself in a timely and orderly fashion.

7. Mr. Anderson, in a good-faith effort, has properly notified the Clerk of the Court and the residing Honorable judges immediately upon each respective facility transfer in accordance with the Local Rules of Practice.

8. Mr. Anderson did not receive the bulk federal mail, including Chief Judge LEWIS T. BABCOCK's order, until Thursday, August 3rd, 2017. This amounts to approximately 84-85 total business days from the date of the A.P.C. filing.

9. The S.A.P.C. was mailed from L.C.D.C. on Wednesday, November 1st, 2017. This amounts to approximately 91 total business days after receiving BABCOCK's order. During these 91 total days, Mr. Anderson had only 20 days to review and respond to the Dismissal in Part Court motion before the

Mr. Anderson's REPLY (continued).

Transfer H occurred. Mr. Anderson also only had approximately 36 days to formulate the S.A.P.C. in between Transfers I and J at A.V.C.F. During those 36 days, Mr. Anderson was only able to utilize the computers and law kiosks no more than twice weekly. Each visit amounted to 2 hours of access per approved appointment. This amounts to only 4 hours of access weekly, which was insufficient for my legal needs.

Mr. Anderson wished to file the S.A.P.C. in a type-written document, but Transfer J inhibited the completion. The majority of those 36 days involved type-writing the S.A.P.C. Transfer J removed access to documents saved on the law computers at A.V.C.F. due to Mr. Anderson no longer being housed at A.V.C.F. during his current lengthy writ (currently 54 days). Mr. Anderson had to resort back to a half-finished hand-written S.A.P.C. This was an additional undue hardship. Utilizing hand-written notes, it took Mr. Anderson 27 total days before formally filing the S.A.P.C.

10. Mr. Anderson sent a letter to the Clerk on Wednesday, October 11th, 2017 to notify the Court of my dilemma with hand-writing my S.A.P.C. from scratch, and an attempt in good-faith to mail it by Monday, October 16th, 2017. Mr. Anderson submitted for filing the S.A.P.C. only 21 days from date of letter, and only 16 days after the proposed date to finish in the letter.
11. Mr. Anderson had a conflicting Jury Trial in Larimer County District Court on October 23rd through October 25th. The preparation for a trial, court appearances, and meetings with counsel took up large amounts of Mr. Anderson's time. This was an additional undue hardship. Even with overlapping legal cases, Mr. Anderson filed the S.A.P.C.

Mr. Anderson's REPLY (continued)

within 7 days of the ending of trial.

12. The Court's review of the A.P.C. never afforded Mr. Anderson with proper notice or reasonable accommodation to amend the amended prisoner complaint, while having notice of the "undue duress" from Mr. Anderson's legal letters.

13. Mr. Anderson believes that he was entitled by law to an opportunity to amend the amended prisoner complaint to cure any deficiencies before any defendants were removed from the suit.

14. One of the core pillars of the suit lies against Defendant Boxberger. Mr. Anderson believes that Boxberger's actions were not protected or entitled to absolute prosecutorial immunity due to intentional malicious acts that rest on the outside of her duty or capacity as an agent of the actual Government. Her malicious actions were discretionary, as alleged more clearly in the S.A.P.C., and were very degrading, demoralizing and intentional constitutional deprivations of Mr. Anderson's constitutional rights.

15. Boxberger violated a duty she owed the public, the legal system, and the profession. Her role as prosecutor makes her an instrument of the legal system, a representative of the system of justice. The fact that she lied for what she thought was a good reason does not obscure the fact that she lied—in an important circumstance and about important facts. To the extent Boxberger's misconduct perpetuates the public's misperception of our profession, she breached public and professional trust. See generally ABA Standards 5.0-7.0.

15. To quote the CO Supreme Court, "In sum, we agreed with

Mr. Anderson's REPLY (continued)

the hearing board that deceitful conduct done knowingly or intentionally typically warrants ^{suspension}, or even disbarment. See ABA Standards 7.2 id. at 5.11(b):

"Disbarment is generally appropriate when... a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation."

17. To quote the quote of CHIEF JUDGE LEWIS T. BABCOCK in his briefing of the Masters v. People case file:

"Canon 5 of the American Bar Association ("ABA") Canons of Professional Ethics adopted in 1908 provides:

'The primary duty of a lawyer engaged in public prosecution is not to convict, but to see that justice is done. The suppression of facts or the secreting of witnesses capable of establishing the innocence of the accused is highly reprehensible.' In turn, Ethical Consideration ("EC") 7-13 of the ABA Code of Professional Responsibility adopted in 1969 provides:

'The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice not merely to convict... With respect to evidence and witnesses, the prosecutor has responsibilities different from those of a lawyer in private practice: the prosecutor should make timely disclosure to the defense of available evidence, known to him, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment. Further, a prosecutor should not intentionally avoid pursuit of evidence merely because he believes it will damage the prosecutor's case or aid the accused.'¹¹ This site can be found in links attached to:

Mr. Anderson's REPLY (continued)

Masters v. Gilmore, 2009 U.S. Dist. LEXIS 74709 (D. Colo., Aug. 21, 2009).

18. Although many of Boxberger's actions are barred by Heck v. Humphrey, the actions raised in the S.A.P.C. are believed by Mr. Anderson to be highly reprehensible, and highly reprehensible malicious acts are not entitled to absolute prosecutorial immunity. If Boxberger's actions were highly reprehensible, she should not have been removed from the suit.

19. Mr. Anderson believes that his case is significantly prejudiced by the removal of Boxberger, and that the actual termination was erroneous in nature.

20. LEWIS T. BABCOCK failed to properly reiterate the claims against Boxberger that were not barred by Heck v. Humphrey. This is not entirely BABCOCK's fault, as Mr. Anderson is partly to blame. The abundance of claims in the A.P.C., although being legally permission in the future, were legally barred by Heck v. Humphrey. This causes the A.P.C. to be legally deficient, and needs to be amended to properly meet justice. BABCOCK's stay or dismissal of claims barred by Heck v. Humphrey was constitutional. I wish to be clear on that matter. However, his legal preliminary dismissal of the claims against Boxberger that were not barred by Heck v. Humphrey was flawed and unconstitutional.

21. A specific example is when BABCOCK failed to legally convey the actual claim being raised, while focusing primarily on using a technicality of the F.J.D.A. citation being improper to completely disregard or avoid the claim

Mr. Anderson's REPLY (continued)

itself. The S. A. P. C. attempts to cure this specific deficiency with explanation.

22. Allowing the amend of the amended prisoner complaint to occur, allows Mr. Anderson to remove large portions of the suit that were barred, and focus the suit into six very specific and simplified claims. The S. A. P. C. is the appropriate form of the suit to base litigation off of, and best serves the interests of justice.
23. Mr. Anderson complied with BABCOCK's dismissal in part by removing the claims barred under Heck v. Humphrey. The S. A. P. C. only asserts claims that do not call for the invalidation of either a conviction or sentence.
24. Citing Federal Rule of Civil Procedure 15(c)(1)(B):
"the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out - or attempted to be set out - in the original pleading."
25. The claims in the S. A. P. C. were attempted to be set out in the A. P. C. in good faith. The contents of the A. P. C. directly relates to five out of six of the claims in the S. A. P. C. The clarification of the claims will aid the defendant's comprehension of what the claims are actually asserting, which is in the best interest of justice.
26. The only new claim, not present in the A. P. C., was only recently discovered during the interim between the A. P. C. and S. A. P. C. filings due to new police reports becoming readily available. These police reports were not available during either the original or amended filings time periods. This claim could not have been reasonably set forth in the

Mr. Anderson's REPLY (continued)

- A.P.C. due to being literally outside the view of Mr. Anderson's presence.
27. The new claim (involving Mr. Anderson's child) does indeed relate back to the substance of the suit, and it best serves the interest of justice to allow this claim to be asserted against Boxberger.
28. The S.A.P.C. clarifies with specificity the issues raised by the Motion to Dismiss in direct opposition of that motion. It is unfair and extreme prejudice to allow that motion to proceed without first granting Mr. Anderson the chance to amend the A.P.C., and reassert claims against Boxberger.
29. The original and amended filings named Boxberger as a defendant in her individual capacity, and is in accordance of Federal Rule of Civil Procedure 15(c)(1)(C)(i), which reads, "received such notice of the action that it will not be prejudiced in defending on the merits."
30. Neither Boxberger or Shuttles would be substantially prejudiced in defending on the merits. The A.P.C. needed to be amended to a S.A.P.C. to help the defendants properly understand the claims, which enables the defendants to be better prepared to defending on the merits.
31. The Court should freely give leave when justice so requires.
32. The Court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice the party's action or defense on the merits.

Mr. Anderson's REPLY (continued)

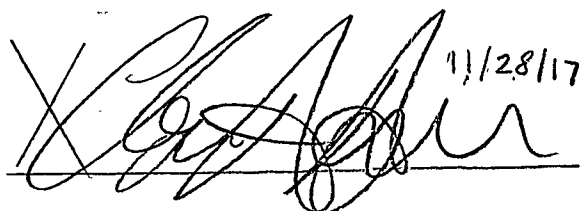
33. The S.A.P.C. also has an updated list of damages, and more importantly, a more thorough injunctive relief to prevent future wrongs by Boxberger at a future hearing on January 19th, 2017 in Larimer County District Courtroom 3B.

34. Mr. Anderson will defer to the Court's choice on what is equitable and just. However, the A.P.C. was critically crippled by BABCOCK's order, and needs to be amended to address that crippling. Equitable tolling allows discretion to the Court where justice so demands. Please acknowledge, review, or carefully consider the undue hardships presented.

35. Thank you for your time and considerations.

Respectfully Submitted;

This Day, Tuesday,
November 28th, 2017.

 11/28/17

CHAYCE AARON ANDERSON
Larimer County Jail
2465 Midpoint Drive
Fort Collins, Colorado 80525