

VI SUPERIOR COURT  
WASHINGTON UNIT  
STATE OF VERMONT

SUPERIOR COURT  
Washington Unit

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2017 OCT 31 A 7:52

CIVIL DIVISION  
Docket No. 179-3-17 Wncv

ERIC JACKSON  
Plaintiff

FILED

v.

Vermont Department of Corrections  
Commissioner LISA MENARD  
Defendant

**DECISION**

**Defendant's Motion to Strike the Amended Complaint, filed August 17, 2017**  
**Plaintiff's Motion to Amend Complaint, filed August 23, 2017**  
**Plaintiff's Motion for Pre-Trial Scheduling Order, filed August 21, 2017**

Plaintiff Eric Jackson, an inmate with several claims against the Department of Corrections, filed an amended complaint after the Defendant answered the original complaint. He did so without having obtained agreement from the Defendant or permission from the court as required by Vermont Rules of Civil Procedure Rule 15(a). The Defendant then filed a Motion to Strike the amended complaint for noncompliance with Rule 15(a) on the grounds that, in addition to being without permission, it raises claims already raised in other pending cases, and because it is unduly burdensome to Defendant. Mr. Jackson responded with a motion seeking retroactive permission to file the amended complaint.

The original complaint, which was filed on March 21, 2017, does not conform to requirements of the Vermont Rules of Civil Procedure for content of a complaint. Rule 8(a) requires that a complaint "*shall* contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." V.R.C.P. 8(a) (emphasis added). Mr. Jackson's original complaint is 44 pages long and addresses a series of perceived wrongs he has suffered since being imprisoned and identifies several legal claims. The factual basis for each claim was not clear as the allegations were mixed in together. He stated in the complaint that he had exhausted administrative remedies on a "majority of the medical issues," but the complaint included a variety of medical and non-medical issues.

After Defendant filed an Answer on May 30, 2017, Mr. Jackson filed a "First Amended Complaint" on July 24, 2017 without filing a motion requesting permission to do so. The amended complaint shares many of the deficiencies of the original complaint, though it is shortened to 22 pages. The amended complaint appears to abandon much of what was asserted or claimed in the original complaint and to add several new claims.<sup>1</sup> He filed with the amended

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<sup>1</sup>Mr. Jackson concedes in briefing that his amended complaint raises new claims and that his original complaint included unnecessary and impertinent information. See Plaintiff's Response 1 (filed Aug. 23, 2017) and Motion to Amend 1 (filed Aug. 23, 2017).

complaint paperwork documenting several grievances, which he appears to have pursued to completion, related to some of his new claims. Although the ADA grievance process was started before this suit was filed, it was not complete until afterwards. See Commissioner's Decision dated April 11, 2017. Other grievance processes were begun *after* he initiated this case.

The State moved to strike the amended complaint on the grounds that permission had not been sought or the reasons for an amended complaint explained, and that Plaintiff has other pending cases with some of the same claims. Mr. Jackson responded by filing a Motion to Amend Complaint, candidly explaining that his amended complaint was intended to include matters that occurred after the initial filing, such as the final outcome of the ADA grievance process.

The amended complaint improperly raises claims that were exhausted only after this case was filed. "This Court has consistently held that when administrative remedies are established by statute or regulation, a party must pursue, or 'exhaust,' all such remedies *before* turning to the courts for relief." *Jordan v. State Agency of Transp.*, 166 Vt. 509, 511 (1997) (emphasis added). Under the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e(a), that same requirement also applies when a prisoner asserts a cause of action arising under the federal constitution. See *Johnson v. Louisiana*, 468 F.3d 278, 280 (5th Cir. 2006); *Kellogg v. Neb. Dep't of Corr. Servs.*, 690 N.W.2d 574, 579 (Neb. 2005) (PLRA exhaustion requirement applies in state court). Any issue raised in court also must be properly preserved. "[T]o properly preserve an issue, a party must present the issue to the administrative agency 'with specificity and clarity in a manner which gives the [agency] a fair opportunity to rule on it.'" *Pratt v. Pallito*, 2017 VT 22, ¶ 16. The claim raised in court must be preserved in an administrative grievance that was properly exhausted *before* filing the court case. Initiating litigation prior to exhaustion would "undermine rather than reinforce the salutary purposes of the exhaustion requirement." *Carter v. Pallito*, No. 177-3-14 Wncv, 2015 WL 5176807 (Vt. Super. Ct. Jan. 5, 2015). It is not permissible to start a case before grievances are exhausted and then seek to amend afterwards when the process is complete. The court has no jurisdiction until all administrative processes have been exhausted on an issue before the filing of a complaint.

In addition, the State has shown that the amended complaint raises several claims that Mr. Jackson is litigating already in other cases (one with the benefit of counsel). A new legal theory in support of the same claim, or some other wrinkle superficially distinguishing claims, does not warrant duplicative litigation and squarely violates Mr. Jackson's duty, shared by all parties and the court, to facilitate the "just, speedy, and inexpensive determination of every action." V.R.C.P. 1. Moreover, responding to multiple overlapping claims in different cases places an undue burden on Defendant.

Therefore, the State's motion to strike the amended complaint is granted. It was filed without permission and includes material over which the court has no jurisdiction or is duplicative of claims in other cases.

Mr. Jackson acknowledges that his original complaint is no longer applicable, and it is lengthy and does not clearly spell out specific facts and the particular claims related to them. Thus the court will grant the motion to amend so as to give Mr. Jackson the opportunity to file a

“Second Amended Complaint” with claims that were ripe as of March 21, 2017, but on the following terms: (1) it must include only short and plain statements of ripe claims, with a separate section for each claim that sets forth the specific facts showing that he is legally entitled to relief on that claim; (2) in each section, facts and attachments are included showing that the claim in that section was raised and preserved in an administrative grievance that was completed before March 21, 2017 (when this case was filed); (3) no claims are included that Mr. Jackson is currently litigating in other cases; and (4) no claims are included that Mr. Jackson has raised in any other case that has reached a final judgment.

Such an amended complaint is due no later than December 1, 2017. Failure to file by that date will result in a dismissal of the case without prejudice. The State may file a motion to strike any portions of such an amended complaint that are not in compliance with these conditions.

Mr. Jackson’s motion for a pretrial scheduling order is denied since it is premature, and the State’s proposed scheduling order is moot.

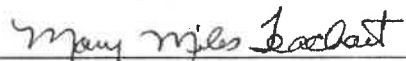
ORDER

For the foregoing reasons,

1. the State’s Motion to Strike (MPR #5) is *granted*;
2. Mr. Jackson’s Motion to Amend (MPR #7) is *granted*; and
3. Mr. Jackson’s Motion for a Scheduling Order (MPR #6) is denied.

Mr. Jackson may file an amended complaint complying with the conditions set forth above by December 1, 2017 or this case will be dismissed without prejudice.

Dated at Montpelier, Vermont this 30<sup>th</sup> day of October 2017.

  
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Mary Miles Teachout  
Superior Judge