

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

EDWARD TORRES,	:		
Plaintiff,	:		
	:		
v.	:	CASE NO.	PRISONER 3:03CV2227(MRK)
	:		
JUDITH HOWELL, et al.,	:		
Defendant.	:		

**RULING AND ORDER**

Plaintiff, Edward Torres is currently confined at the Corrigan-Radgowski Correctional Institution in Uncasville, Connecticut. On December 22, 2003, Mr. Torres filed a civil rights Complaint [doc. #1] ("Compl.") naming as defendants Judith Howell, John Doe One, John Doe Two, Victor Savias, Sergeants DiPrimio and Edwards, Officers Robinson and Michael Slavin, Darlene Dumbar, Dianne McKintosh, Jill Kenworthy, Daniel Martin, Dan Shaban, William R. Kinloch, Days Inn Motel, Bernard Davis, and Richard K. Smith. The original complaint consisted of 78 pages and 116 exhibits. The descriptions of Mr. Torres' claims were nebulous, and as a consequence, Mr. Torres was directed to file an amended complaint that set out with more clarity and specificity the rights he alleges were violated by each individual Defendant. *See* Order [doc. #6]. Mr. Torres has filed a 42-page Amended Complaint [doc. #11] in an effort to comply with the Court's order.

**I.**

The following facts are drawn from Mr. Torres Amended Complaint [doc. #11] ("Am. Compl.") as well as his original Complaint [doc. #1] ("Compl.").<sup>1</sup> For present purposes, the

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<sup>1</sup> Mr. Torres Complaint and amended Complaint consist primarily of unpaginated sheets but page references are provided when available.

Court will assume the truth of the facts alleged by Mr. Torres.

In February 2000, Mr. Torres, his former common law wife, and their four children moved into an apartment on Baldwin Street in Waterbury, Connecticut. Compl. at 3. Mr. Torres was unaware that his putative landlords were illegal aliens unauthorized to rent apartments to tenants, including Mr. Torres, and that the building had been “closed” by the city.

Approximately nine months later, the persons who had been collecting rent from Mr. Torres returned to the Dominican Republic without notice. Between November 2000 and February 2001, water pipes at the Baldwin Street apartment froze and water began seeping from the second floor to the stairs at the front entrance. Mr. Torres removed the ice from the stairs providing access to his apartment. In January or February 2001, Mr. Torres reported the problems to the Department of Health.

Defendants John Doe One and John Doe Two from the Department of Health responded to the call. Mr. Torres gave them his rent receipts and informed them of all of the problems he had observed. Defendants Doe told Mr. Torres that he could stay in the apartment until warmer weather arrived or opt to move to a nearby motel, but neither individual remedied any of the problems or attempted to locate those who had been collecting the rent. When Mr. Torres agreed to move to a motel, the Department of Public Health informed him that he could stay at the motel without charge for two weeks, during which time he must obtain alternative residence. The Department of Public Health provided no assistance in moving. In addition, the motel was not located on a bus line and Mr. Torres could not get his children to school or to medical appointments. At the end of the two weeks, Mr. Torres had not found an apartment and had no friends or relatives with whom he could stay. When the Department of Public Health provided

no further assistance, Mr. Torres returned to the Baldwin Street apartment with his family.

On or about May 10, 2001, Mr. Torres returned home from work at approximately 12:30 a.m. His wife asked him to go to the third floor and ask the tenants living on that floor to quiet down because his children had to attend school the next morning. When Mr. Torres was returning to his second floor apartment he noticed police officers with flashlights outside the front entrance to the apartment building and that they were attempting to enter the building. Mr. Torres descended to the first floor to open the door for the police. The police officers entered, and, as they climbed the stairs, they began questioning Mr. Torres. When the officers reached the door of the apartment occupied by Mr. Torres and his family, one of the officers leaned closely to try to detect noise. When his wife opened the door, one of the officers entered the apartment without permission and began screaming at Mr. Torres' wife in front of his children. Mr. Torres was handcuffed and taken to a police van.

Later that morning, a social worker from the Department of Children and Families and Defendant Victor Savias from the Department of Public Health went to the building with the police. Their report described Mr. Torres as the landlord, and noted that the apartment was infested with roaches, that the floors were covered with trash and feces, that the refrigerator door was hanging off, that there were no blankets on the beds and no running water in the apartment, and there were exposed electrical wires. Mr. Torres disputes the condition of his apartment.

As a result of various state court actions, Mr. Torres has been denied contact with his children and wife. Although Mr. Torres was found not guilty of criminal charges arising from this incident, he was convicted of violation of probation and as a result, he is currently incarcerated.

## II.

Mr. Torres has been granted leave to proceed *in forma pauperis* in this action [doc. #5]. Under 28 U.S.C. § 1915(e)(2)(B), “the court *shall* dismiss the case at any time if the court determines that . . . the action . . . is frivolous or malicious, . . . fails to state a claim on which relief may be granted; or . . . seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. §§ 1915(e)(2)(B)(i)-(iii) (emphasis added); see *Cruz v. Gomez*, 202 F.3d 593, 596 (2d Cir. 2000). An action is “frivolous” within the meaning of § 1915(e)(2)(B)(i) “when either: (1) the factual contentions are clearly baseless, such as when allegations are the product of delusion or fantasy; or (2) the claim is based on an indisputably meritless legal theory . . . [and a] claim is based on an indisputably meritless legal theory when either the claims lacks an arguable basis in law or a dispositive defense clearly exists on the face of the complaint.” *Livingston v. Adirondack Bev. Co.*, 141 F.3d 434, 437 (2d Cir. 1998) (internal quotations and citations omitted). In addition, a complaint will be dismissed if it fails to state a claim upon which relief may be granted. See 28 U.S.C. 1915(e)(2)(B)(ii); see also *Cruz*, 202 F.3d at 596 (“Prison Litigation Reform Act . . . which redesignated § 1915(d) as § 1915(e) [] provided that dismissal for failure to state a claim is mandatory.”).

"[W]hen [a] plaintiff proceeds *pro se* . . . a court is obliged to construe his pleadings liberally, particularly when they allege civil rights violations." *Hemphill v. New York*, 380 F.3d 680, 687 (2d Cir. 2004). "In evaluating [the plaintiff's] complaint, [the Court] must accept as true all factual allegations in the complaint and draw all reasonable inferences in [the plaintiff's] favor." *Cruz*, 202 F.3d at 596-97. Dismissal of the complaint under § 1915(e)(2)(B)(ii) is only appropriate if "it appears beyond doubt that the plaintiff can prove no set of facts in support of

his claim which would entitle him to relief." *Id.* at 597 (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). In addition, “unless the court can rule out any possibility, however unlikely it might be, that an amended complaint would succeed in stating a claim,” the court should permit “a *pro se* plaintiff who is proceeding *in forma pauperis*” to file an amended complaint that states a claim upon which relief may be granted. *Gomez v. USAA Federal Savings Bank*, 171 F.3d 794, 796 (2d Cir. 1999).

### III.

After reviewing Mr. Torres' amended complaint, the Court concludes that several claims and defendants – namely, Richard K. Smith, Dan Shaban, and Days Inn Motel – should be dismissed.

#### A. Request for Court Investigation

In Claim I of his amended complaint, Mr. Torres asks this Court to search state court records as well as records of all hospitals where his children were treated and all schools they attended for information relevant to this case. He states that the records may be located in Waterbury, Connecticut; Hartford, Connecticut; Newark, New Jersey; and Miami-Dade County, Florida.

The Court cannot conduct the independent investigation that Mr. Torres requests. The role of a court is that of impartial adjudicator of a dispute between the parties. If the Court were to conduct the requested investigation to find information to support possible claims that Mr. Torres could assert, the Court would be acting as Mr. Torres' advocate and not as an impartial adjudicator. *See Martinez v. Court of Appeal of Cal., Fourth Appellate Dist.*, 528 U.S. 152, 162 (2000) (“[T]he trial judge is under no duty . . . to perform any legal 'chores' for the defendant that

counsel would normally carry out."); *Griffin v. Komenecky*, No. 95-CV-796 (FJS) (DNH), 1997 WL 204313, at \*4 (N.D.N.Y. Apr. 14, 1997) (holding that prison hearing officer had no obligation to conduct independent investigation on ground that "such an independent investigation . . . threatens the hearing officer's impartiality by intermingling the roles of investigator and adjudicator"), *aff'd*, 133 F.3d 907 (2d Cir. 1998). Accordingly, the Court dismisses Mr. Torres' request for an investigation in Claim I of the amended complaint.

**B. Days Inn Motel and Dan Shaban**

In Claims VI and VIII of his amended complaint, Mr. Torres asserts that defendants Days Inn Motel and Waterbury Corporation Counsel Dan Shaban failed to respond to requests for documents sought pursuant to the state and federal Freedom of Information Acts. Mr. Torres asserts no other claim against these defendants. The federal Freedom of Information Act, 5 U.S.C. § 552(b), applies to federal agencies as defined in § 551(1) of the act. No defendant in this action is a federal agency or an employee of a federal agency. Thus, Mr. Torres fails to state a claim for relief under the federal Freedom of Information Act and his claims against Mr. Shaban and the Days Inn Motel under the federal Freedom of Information Act are dismissed pursuant to §§ 1915(e)(2)(B)(i) and (ii). As to any claims that Mr. Torres may have against these defendants under the state Freedom of Information Act, the Court declines to exercise supplemental jurisdiction over such state law claims against defendants Shaban and Days Inn Motel. *See Giordano v. City of New York*, 274 F.3d 740, 754 (2d Cir. 2001) (noting that where all federal claims have been dismissed before trial, pendent state claims should be dismissed without prejudice and left for resolution in the state courts). Therefore, Claims VI and VIII of the amended complaint against Mr. Shaban and Days Inn Motel are dismissed.

The Court notes that at various points throughout his amended complaint Mr. Torres refers to the failure of these and other defendants to respond to subpoenas. The proper method to seek enforcement of a subpoena is to return to the court on whose behalf the subpoena was issued and seek an appropriate enforcement order. *See* Fed. R. Civ. P. 45(c)(1) (stating that subpoena shall be enforced by the court on behalf of which subpoena was issued). In federal court, a subpoena may be issued by a clerk of the court or an attorney as officer of the court. *See* Fed. R. Civ. P. 45(a)(3). The record in this case contains no reference to any request for issuance of subpoenas by the clerk of this Court and Mr. Torres is not an attorney. Thus, the Court assumes that Mr. Torres refers to subpoenas issued by another court. The Court advises Mr. Torres to seek the assistance in enforcing any subpoena from the judicial body that issued it.

**C. Defendant Richard K. Smith**

In Claim X of his amended complaint, Mr. Torres alleges that Defendant Richard K. Smith, the Assistant Clerk of the Superior Court of Connecticut, denied him legal assistance with his petitions, motions and service. The exhibits attached to the original complaint reveal that, in response to letters from Mr. Torres, Mr. Smith correctly informed him that the Superior Court of Connecticut could not assist him in drafting motions and Mr. Smith instructed Mr. Torres to contact the State's Attorney's Office if he wished to initiate a criminal matter. *See* Letter of 4/04/03, Ex. 83 attached to Compl.; Letter of 8/18/03, Ex. 79 attached to Compl. As the Court explained above, a court, whether through a judge or the court clerk, may not act as an advocate on behalf of a party by drafting motions or providing legal advice. "Requiring . . . courts to advise a pro se litigant in such a manner would undermine the [court's] role as [an] impartial decisionmaker[]." *Pliler v. Ford*, 124 S.Ct. 2441, 2446 (2004). Therefore, in Claim X, Mr.

Torres has not stated a claim against Mr. Smith upon which relief could be granted.

Even if the Court liberally construes Mr. Torres claim as a general claim that he was denied his right of access to the courts, the claim must still be dismissed. In *Lewis v. Casey*, 518 U.S. 343 (1996), the Supreme Court explained that an inmate's right of access to the courts encompasses a right to have "prison authorities assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." *Id.* at 346 (citations omitted). In order to bring a claim for deprivation of this right, an inmate must demonstrate "actual injury." *Id.* at 349-50.

As an illustration of a situation that might constitute a violation of this right, the Supreme Court postulated that if an inmate were able to show that, as a result of the defendant's action, he was unable to file an initial complaint or petition, or that the complaint he filed was so technically deficient that it was dismissed without a consideration of the merits of the claim, he could state a claim for denial of access to the courts. *See id.* at 351. The Supreme Court, however, specifically disclaimed any requirement that prison officials ensure that inmates have sufficient resources to discover grievances or litigate effectively once their claims are brought before the court. *See id.* at 355. In fact, the Court stated that its right of access decisions do "not guarantee inmates the wherewithal to transform themselves into litigating engines capable of filing everything from shareholder derivative actions to slip-and-fall claims. The tools it requires to be provided are those that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement." *Id.* "Impairment of any other litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration." *Id.*



Mr. Torres does not claim that he was denied assistance by Inmates' Legal Assistance Program, the organization that provides legal assistance for Connecticut prisoners; nor does he allege any facts suggesting that he was unable to commence any lawsuits, let alone ones challenging his sentence or conditions of confinement, as a result of the alleged actions of Mr. Smith. Thus, the fact that Mr. Smith informed Mr. Torres that the Superior Court cannot provide him with the legal assistance he requested does not constitute a denial of Mr. Torres' right of access to the courts. Accordingly, Mr. Torres' sole claim against Mr. Smith, Claim X of the amended complaint, is dismissed pursuant to § 1915(e)(2)(B)(ii).

#### **IV.**

Also pending are Mr. Torres' Motion for Injunctive Relief [doc. #12], Motion for Extension of Time to file exhibits [doc. #13], Motion for Extension of Time to amend the amended complaint [doc. #14] and Motion to Amend the amended complaint [doc. #15].

Mr. Torres requests injunctive relief requiring correctional officials at Radgowski Correctional Institution to mail his amended complaint to the court. As noted above, the Court has received the amended complaint. Accordingly, Mr. Torres' request for injunctive relief [doc. #12] is DENIED as moot.

Although there are some ambiguities in the other motions, the Court construes Mr. Torres' Motion for Extension of Time [doc. #14] and Motion to Amend [doc. #15] together as a request for an extension of time until January 2005 to file a second amended complaint because at that time, Mr. Torres expects to be released from prison and will be better able to prosecute his action. The Court GRANTS Mr. Torres' motions and will allow him to file a second amended

complaint on or before January 6, 2005.

Finally, Mr. Torres also requests an extension of time to submit exhibits to his amended complaint [doc. #13]. He states that he lacked funds to pay to have the exhibits copied at the same time as the amended complaint. The Court assumes that the exhibits referenced are the exhibits that were attached to the original complaint. The Court has considered those exhibits in reviewing the amended complaint, and Mr. Torres need not file them again. However, the Court GRANTS his motion [doc. #13] to the extent that Mr. Torres has additional exhibits that he would like to bring to the attention of the Court. Mr. Torres may submit these exhibits with his second amended complaint on or before January 6, 2005.

The Court also advises Mr. Torres that he has not yet properly served any of the Defendants in this action. To enable the U.S. Marshal to effect service of his amended complaint on the remaining defendants, Mr. Torres is directed to complete the enclosed forms: (1) two Marshal service forms, one summons form and one set of Notice of Lawsuit and Waiver of Service of Summons forms for each defendant, Judith Howell, Darlene Dunbar, Diane McKintosh, Jill Kenworthy, William R. Kinloch, Victor Savias and Bernard Davis, using each Defendant's current work address; (2) one summons form and one Marshal service form for each Defendant, Sergeant DiPrimio, Sergeant Edwards, Police Officer Robinson and Police Officer Slavin *c/o* Waterbury City Clerk, using the address of the Waterbury City Clerk; (3) one set of notice of lawsuit and waiver of service of summons forms and one Marshal service form for each defendant, Sergeant DiPrimio, Sergeant Edwards, Police Officer Robinson and Police Officer Slavin using an address at which the Defendant may be located; (4) one set of notice of lawsuit and waiver of service of summons forms and one Marshal service form for Defendant Daniel

Martin using his current work address; and (5) one set of notice of lawsuit and waiver of service of summons forms and one Marshal service forms for defendant Martin c/o Attorney General using the address, 55 Elm Street, Hartford, CT 06106. The Court cautions Mr. Torres that the U.S. Marshal cannot effect service unless he provides complete addresses, including street numbers, on these forms.

Mr. Torres shall complete and return to the court the enclosed forms and twenty-four copies of his amended complaint, including all referenced exhibits, on or before January 6, 2005.

**The Court cautions Mr. Torres that failure to return the forms and copies in a timely manner to the Clerk at 915 Lafayette Boulevard, Bridgeport, CT 06604, may result in the dismissal of this case without prejudice and without further notice from this Court.**

Upon receipt of the forms and copies, the Clerk is directed to forward the appropriate papers to the U.S. Marshal. The U.S. Marshal is directed to serve the complaint on the named defendants in their individual and official capacities and to file a return of service within sixty (60) days from the date the service packets are delivered to the U.S. Marshal Service.

Each defendant is directed to file an appearance in his or her official capacity within thirty (30) days from the date of service of summons and in his or her individual capacity within sixty (60) days from the date he or she signs a waiver of service of summons.

#### **IV.**

The amended complaint is DISMISSED without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B) (i) and (ii) as to all claims against Defendants Smith, Shaban, and Days Inn Motel and all claims against any defendant concerning failure to respond to a Freedom of Information

Act request or a subpoena. In addition, Mr. Torres' request for an investigation by the Court, contained in the amended complaint, and motion for injunctive relief [**doc. #12**] are DENIED. The following claims remain in Mr. Torres' lawsuit at this stage: Claim I, excluding the request for an investigation by the Court, Claim II, Claim III, Claim IV, Claim V, Claim VII, and Claim IX. Mr. Torres' Motion for Extension of Time to file exhibits [**doc. #13**], Motion for Extension of Time to amend the amended complaint [**doc. #14**] and Motion to Amend the amended complaint [**doc. #15**] are all GRANTED.

**Mr. Torres is hereby cautioned that JANUARY 6, 2005 is the deadline for all requested amendments to the complaint, submission of additional exhibits, if any, and completion and return to the Court of the enclosed forms that are required to effectuate service upon the remaining defendants.**

IT IS SO ORDERED.

/s/ Mark R. Kravitz  
United States District Judge

Dated at New Haven on: December 6, 2004.