IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NATHANIEL BAGWELL,	)	
	)	
Plaintiff,	)	
v.	)	Case No. 99-412 GMS
	)	
RAPHAEL WILLIAMS, PERRY, PHELPS, and BOVELL,	)	
	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

I. INTRODUCTION

The plaintiff, Nathaniel Bagwell ("Bagwell"), is a *pro se* litigant who is incarcerated at the Multi-Purpose Criminal Justice Facility in Wilmington, Delaware. On June 29, 1999, he filed the above-captioned action pursuant to 42 U.S.C. § 1983. At that time, Bagwell also requested leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. The court granted Bagwell *pauper* status.

Presently before the court are four motions related to Bagwell's complaint. Three of these motions are Bagwell's motions to amend his complaint. The fourth is the defendants' request that Bagwell's complaint be dismissed unless he immediately pays the full $150 filing fee. For the reasons that follow, the court will provisionally grant Bagwell's motions and deny the defendants' motion with regard to Bagwell's original complaint.

II. BACKGROUND

Bagwell is a prolific, and consistently unsuccessful, prison litigator. In addition to the above-captioned action, he has filed at least four prior unsuccessful civil actions in federal courts. These prior actions have all failed as a matter of law. *See Bagwell v. Lt. Paul Walker*, C.A. No. 86-11-MMS (D.

Del. 1988); *Bagwell v. Watson, et al.*, C.A. No. 90-471-JJF (D. Del. 1991); *Bagwell v. Kobus, et al.*, C.A. No. 92-557-LON (D. Del. 1993); *Bagwell v. Oberly, et al.*, 1993 WL 14663 (D. Del. Jan. 14, 1993).

The present action involves Bagwell's claims for mental and emotional distress and bodily harm suffered as a result of a correctional officer's alleged false statements against Bagwell. Specifically, he alleges that on April 24, 1999, Correctional Officer Bovell entered his housing area and said in a loud voice, which other inmates could hear, "Bagwell, I read the grievance and affidavit that you wrote on me that inmates be [sic] pushing buttons opening cell doors while I be [sic] playing cards." Bagwell alleges that, as a result of this statement, and immediately after it was made, the inmates in the housing area began taunting him and calling him a "snitch." He further alleges that the inmates said, "snitches get stitches." As a result, Bagwell claims he suffered mental and emotional distress and damage to his reputation. Finally, he contends that other inmates have since picked fights with him.

Bagwell has filed three motions to amend his original complaint. In the first motion to amend (D.I. 11), he seeks to add the following four claims: (1) "inhuman[e] conditions" resulting from a lack of bathroom privacy; (2) false imprisonment; (3) "deprivation of liberty without due process"; and (4) denial of access to the courts and law library. In his second motion (D.I. 12), Bagwell seeks to add a retaliation claim against two new defendants, Officers Mounet and Lewis. In his final motion to amend (D.I. 16), Bagwell wishes to add a denial of due process claim, resulting from the prison's alleged denial of his right to present witnesses on his behalf at a grievance hearing.

On January 15, 2002, the defendants filed a motion to compel Bagwell to immediately pay the applicable filing fees, notwithstanding his *pauper* status.

The court will now discuss each of these motions in turn.

III. DISCUSSION

Federal Rule of Civil Procedure 15(a) requires a plaintiff to seek leave of the court to file an amended complaint after a responsive pleading has been filed. However, the rule unequivocally states that such "leave shall be freely given when justice so requires." *See* FED. R. CIV. P. 15(a); *see also Shane v. Fauver*, 213 F.3d 113, 115 (3d Cir. 2000). Thus, leave to amend should be granted absent a showing of undue delay, dilatory motive on the part of the movant, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party, bad faith, or futility. *See Foman v. Davis*, 371 U.S. 178, 182 (1962).

In ruling on Bagwell's motions to amend, the court is especially mindful that Bagwell is a *pro se* plaintiff. Thus, although the allegations in his proposed amendments are sparse at best, the court will not summarily reject them at this stage. Bagwell should be given the opportunity to flesh out his arguments more fully. Moreover, there has been no showing that to grant Bagwell's motion would result in an undue delay, or that Bagwell is acting with a dilatory motive. Finally, while the court expresses no opinion on the merits of Bagwell's claims, should the defendants wish to file a motion to dismiss at a later stage in this litigation, they are within their rights to do so.

However, before Bagwell is permitted to amend his complaint to include the additional claims, he must first pay the $150 filing fee for those claims. The "three strikes" provision of the Prison Litigation Reform Act, § 1915(g), provides that "in no event" shall a prisoner be permitted to proceed without prepayment under this Section if he has pursued three or more actions or appeals in federal courts which were dismissed on grounds that they were frivolous, malicious, or failed to state a claim upon which relief

could be granted. The only exception to this Section is for prisoners who are under an imminent danger of serious physical injury. *See* 28 U.S.C. § 1915(g).

It is clear that Bagwell has "struck out" within the meaning of Section 1915(g). He has filed at least four complaints that fit the criteria of the Section. However, in its February 21, 2001 decision, the court determined that Bagwell was under an imminent danger of serious physical injury.[1] Accordingly, the court declines to rescind Bagwell's *pauper* status with regard to his original complaint.

While Bagwell may thus properly proceed with his original complaint, in light of Section 1915(g), he may not now add additional claims to his complaint that do not allege that he is in imminent danger of serious bodily injury. To allow him to do so would enable him to improperly circumvent the requirements of, and the policy behind, Section 1915(g).

Thus, before Bagwell may amend his complaint, he must prepay the full $150 filing fee.[2]

IV. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. Nathaniel Bagwell's motions to amend (D.I. 11, D.I. 12, and D.I. 16) are GRANTED, provided that he first prepays the full filing fee of $150 within thirty (30) days of the date of this order;

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[1]Specifically, the court recognized the serious implications of being called a "snitch" in prison. *See Blizzard v. Hastings*, 886 F. Supp. 405, 410 (D. Del. 1995) (stating that being labeled a snitch "can put a prisoner at risk of being injured.") Other Circuits have also held that a correction officer's calling a prisoner a "snitch" in front of other inmates is an Eighth Amendment violation. *See Northington v. Jackson*, 973 F.2d 1518, 1525 (10th Cir. 1992).

[2]As always, notwithstanding any payment made or required, the court shall dismiss the case if it determines that the action is frivolous or malicious, fails to state a claim on which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief.

2. In the event that Nathaniel Bagwell fails to pay the full $150 filing fee, his motions to amend (D.I. 11, D.I. 12, and D.I. 16) will be denied; and

3. The defendants' Motion to Compel Immediate Payment of Full Filing Fees (D.I. 19) is DENIED with regard to Bagwell's June 29, 1999 complaint, and GRANTED with regard to Bagwell's subsequent motions to amend (D.I. 11, D.I. 12, and D.I. 16).

4. Nathaniel Bagwell's motion to stay all proceedings pending the court's ruling on the above motions (D.I. 23) is declared moot.

Date: January 31st, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE