

FILED

06/08/2020

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: PR 20-0011

THIRTEENTH JUDICIAL DISTRICT
STATE OF MONTANA

Gregory R. Todd
DISTRICT JUDGE—DEPARTMENT 4
MARRIS HARRIS, JUDICIAL ASSISTANT
GEOFFREY CURTISS, COURT REPORTER



PO Box 35026
BILLINGS, MONTANA 59107
PHONE: 406.256.2901
FAX: 406.256.2970

FILED

JUN 08 2020

Bowen Greenwood
Clerk of Supreme Court
State of Montana

June 8, 2020

Chief Justice Michael McGrath
Montana Supreme Court
Room 414, Justice Building
215 North Sanders
Helena, MT 59620

PR 20-0011

RE: State v. Jose Martinez Jr.
13th Judicial District Court Cause No. DC 19-674 and DC 20-767

Dear Chief Justice McGrath:

I have presided over both cases involving Jose Martinez Jr. Mr. Martinez has filed the enclosed Motion to Disqualify for Cause as well as the enclosed Federal Court civil Complaint. Pursuant to § 3-1-805, I am notifying you of these developments. I await your response.

Sincerely yours,


GREGORY R. TODD
District Court Judge

Cc: Jose Martinez Jr., YCDF
Gregory Paskell, OPD
Jacob Yerger, YCAO

Jose Martinez, JR
3165 King Ave East
Billings MT 59101

IN THE 13th JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY, MONTANA

STATE OF MONTANA, Plaintiff	Cause No: DC-19-0674 Judge: Gregory R. Todd
-VS-	Motion To Disqualify for Cause.
JOSE MARTINEZ, JR, Defendant.	

Comes Now, Jose Martinez JR., appearing pro se, as notice was given to the court about removal of counsel of record, and hereby motions the court for Hon. Gregory Todd to disqualify himself in the above matter as he is in violation of MCA 3-1-803 and of Rule 2.12(2)(a) of the Montana Code of Judicial Conduct.

1. On May 4th, 2020, a civil lawsuit was filed in the U.S. District Court by the above Defendant against Hon. Gregory Todd, Case No: 1:20-cv-00062-SPW-TJC,

2. Due to Hon. Gregory R. Todd being a party in a proceeding with the Defendant, disqualification for cause is just and required.

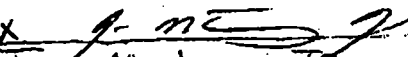
3. Any continued presence or participation in the above case

by Hon. Gregory R. Todd would put his impartiality at serious question.

4. A judge's obligation not to hear or decide matters in which disqualification is required applies regardless if a motion to disqualify is filed. Under Rule 2.12 of the Montana Code of Judicial Conduct a judge is disqualified whenever the judge's impartiality is reasonably questioned.

In closing the Defendant asks that Hon. Gregory Todd disqualify himself and enter a motion of recusal with the court in compliance with 3-1-803 MCA and Rule 2.12 of the Montana Code of Judicial Conduct.

Respectfully submitted this 18th day of May, 2020.

X 
Jose Martinez, Jr.

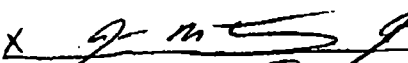
Certificate of Service

I the undersigned, Jose Martinez, swear that a true and correct copy of the motion to disqualify was sent to:

Clerk of Court

P.O. Box 35030

Billings MT 59107

X  Date
Jose Martinez JR.

UNITED STATES DISTRICT COURT

for the

MAY 04 2020

Clerk, U.S. Courts
District of Montana
Billings Division

JOSE MARTINEZ, JR
Plaintiff/Petitioner
v.
JACOB YERGER; JUDGE GREGORY R. TODD
Defendant/Respondent

Civil Action No.

APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS
(Short Form)

I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested.

In support of this application, I answer the following questions under penalty of perjury:

1. *If incarcerated.* I am being held at: Y.C.D.F - Billings MT

If employed there, or have an account in the institution, I have attached to this document a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months for any institutional account in my name. I am also submitting a similar statement from any other institution where I was incarcerated during the last six months.

2. *If not incarcerated.* If I am employed, my employer's name and address are:

My gross pay or wages are: \$ 0, and my take-home pay or wages are: \$ 0 per
(specify pay period) _____

3. *Other Income.* In the past 12 months, I have received income from the following sources (check all that apply):

- | | | |
|--|------------------------------|--|
| (a) Business, profession, or other self-employment | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (b) Rent payments, interest, or dividends | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (c) Pension, annuity, or life insurance payments | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (d) Disability, or worker's compensation payments | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (e) Gifts, or inheritances | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (f) Any other sources | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

4. Amount of money that I have in cash or in a checking or savings account: \$ 0

5. Any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value that I own, including any item of value held in someone else's name (describe the property and its approximate value):

None

6. Any housing, transportation, utilities, or loan payments, or other regular monthly expenses (describe and provide the amount of the monthly expense):

None

7. Names (or, if under 18, initials only) of all persons who are dependent on me for support, my relationship with each person, and how much I contribute to their support:

None

8. Any debts or financial obligations (describe the amounts owed and to whom they are payable):

- \$100 in inmate account.

Declaration: I declare under penalty of perjury that the above information is true and understand that a false statement may result in a dismissal of my claims.

Date: 4-31-20

x. J m
Applicant's signature
JOSE MARTINEZ, JR
Printed name

UNITED STATES DISTRICT COURT

for the

Billings District of Montana

Billings Division

Case No. _____

(to be filled in by the Clerk's Office)

JOSE MARTINEZ, JR

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

ATTY YELLOWSTONE COUNTY-JACOB YERGER;

JUDGE GREGORY R. TODD

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS (Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

Jose Martinez, JR

All other names by which
you have been known:

Joey

ID Number

#000100655

Current Institution

Y.C.D.F.

Address

3165 King Ave East

Billings
CityMT
State

59101

Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name

Jacob Yenger

Job or Title (*if known*)

YELLOWSTONE County Attorney

Shield Number

Employer

Yellowstone County

Address

P.O. Box 35025, Room 701 courthouse

Billings
CityMT
State

59107-5025

Zip Code

☒ Individual capacity☒ Official capacity**Defendant No. 2**

Name

Gregory R. Todd

Job or Title (*if known*)

District Court Judge

Shield Number

Employer

Yellowstone County

Address

Billings
CityMT
State

59107

Zip Code

☒ Individual capacity☒ Official capacity

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Defendant No. 3

Name

Job or Title (if known)

Shield Number

Employer

Address

City

State

Zip Code

☐ Individual capacity

☐ Official capacity

Defendant No. 4

Name

Job or Title (if known)

Shield Number

Employer

Address

City

State

Zip Code

☐ Individual capacity

☐ Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

☐ Federal officials (a *Bivens* claim)

☒ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

By refusing to order V.C.D.F. to comply with the plaintiffs Doctor's orders and prescriptions to ease his pain & suffering and his disability, the plaintiffs rights to health & safety are violated under the 14th Amend and also adds to cruel & unusual punishment which is protected under the 8th Amend, thus adding unneeded agony suffering. Non compliance with ADA requirements.

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed. *As courts and prosecutor, on Nov. 4th 2019, a motion was filed for the court to order Y.C.D.F to allow compliance with plaintiffs medical needs. Court/state denied motion adding to plaintiffs pain & suffering.*

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (check all that apply):

- ☒ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☐ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☐ Other (explain) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.
- Claim arises to Plaintiff being denied medical treatment and prescribed meds. Nov. 4, 2019 motion was filed to seek court to order Y.C.D.F to allow plaintiff his medicine. Court denied motion and fails to acknowledge his disability even tho the plaintiff is legally disabled. Judge Gregory Todd and prosecutor Jacob Yerger refuse to acknowledge his suffering.*

C. What date and approximate time did the events giving rise to your claim(s) occur?

May 31st 2019 until present. Still being denied my medication and am in constant pain.

D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

I've been disabled for 12 years. Legally disabled, am under care of a private physician for his pain management. When Plaintiff went to Y.C.D.F. he was denied his medicine and ADA conditions. Plaintiff's criminal attorney motioned the court Nov. 4th 2019 to get the court to force Y.C.D.F. to comply with his doctor's orders. Yet the court denied the motion. Since point, almost 1 yr. now, the plaintiff suffers on a daily basis.

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

I'm in continuing pain and I need my medication, I need my physical therapy, need my orthopedic shoes to help keep back in alignment.

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes.

If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims. I want court to look into constitutional violations that the Defendants inflicted upon the plaintiff, Ask that the court intervene and allow plaintiff to have the same level of health care that he had prior to being a pre-trial detainee, as anything other than such level is a form of punishment and cruel and unusual, its complete indifference. Ask that a punitive/exemplary damages to be in the amount of \$250,000 each or at a level that the court sees appropriate to ensure the Defendants are adequately punished.

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☐ Yes

☒ No

☐ Do not know

If yes, which claim(s)?

- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☐ No

- E. If you did file a grievance:

1. Where did you file the grievance? Y.C.D.F. - Yellowstone County Detention Facility.

2. What did you claim in your grievance? That I was denied my medical attention that I was denied my prescribed medicine, that the courts and jail did not make reasonable accommodations for my handicap nor did they make A.D.A accommodations to me.

3. What was the result, if any? Denied. Asked court to intervene and order the jail to allow medicine and was denied.

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.) Yes, grievance process is exhausted, court refused to intervene, hence this lawsuit/complaint.

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has "on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this "three strikes rule"?

☐ Yes

☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

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- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☒ Yes

☒ No

- B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)

1. Parties to the previous lawsuit

Plaintiff(s) ~~Wanda Williams~~

Defendant(s) _____

2. Court (if federal court, name the district; if state court, name the county and State)

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☒ Yes

☒ No

N/A

If no, give the approximate date of disposition. _____

7. What was the result of the case? (For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)

- C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

☐ Yes

☒ No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: X 4-31-20

Signature of Plaintiff

X [Signature]

Printed Name of Plaintiff

Jose Martinez, JR

Prison Identification #

#000100655

Prison Address

3165 King Ave East

Billings
City

MT
State

59101
Zip Code

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address