STATE OF MICHIGAN

COURT OF CLAIMS

KEVIN POTTER,

Plaintiff,

v Case No. 25-000185-MP

P. SULLENBERGER et al, Hon. Michael J. Riordan

Defendants.
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OPINION AND ORDER GRANTING DEFENDANTS' 9/11/26 MOTION FOR SUMMARY DISPOSITION

Plaintiff filed this action under the Prisoner Litigation Reform Act (PLRA). The Court previously dismissed plaintiff's action for failure to pay a filing fee but reinstated the action on January 8, 2026. The Court again dismissed plaintiff's action on April 29, 2026, for failure to effectuate service and again reinstated the action when plaintiff presented proof he effectuated timely service through the prison mailroom. Defendants again seek dismissal of plaintiff's complaint, this time for failure to comply with the notification requirements of the PLRA. The Court GRANTS defendants' motion and DISMISSES plaintiff's action without prejudice to plaintiff initiating a new action.

"The PLRA sets forth certain requirements that apply when a prisoner brings a civil action concerning prison conditions." *Anderson v Myers*, 268 Mich App 713, 715; 709 NW2d 171 (2005); MCL 600.5503(1). One of the requirements a plaintiff must meet is to "upon commencement of the action or initiation of the appeal, disclose the number of civil actions and

appeals that the prisoner has previously initiated." MCL 600.5507(2). See *Does v Dep't of Corrections*, 312 Mich App 97, 107; 878 NW2d 293 (2015), vac in part on other grounds 499 Mich 886 (2016). The Legislature provides "The court shall dismiss a civil action" if it finds that the plaintiff did make this required disclosure. MCL 600.5507(3). The Court of Appeals has held that the mandatory dismissal language in MCL 600.5507 prevents a trial court from permitting a plaintiff to amend his or her complaint to remedy a deficient notification under the statute. *Does*, 312 Mich App at 112-113.

At the outset of plaintiff's complaint and first amended, verified complaint, plaintiff stated:

> There [sic] no other action between these these [sic] parties arising out of the same transaction or Occurrence as alleged in this Complaint and Affidavit pending in this Court. Nor has any action been previously filed, dismissed, transferred, or disposed of after being assigned to a Judge.

The language of the first sentence does not meet the requirements of MCL 600.5507(2). The PLRA requires disclosure of all civil suits and appeals filed by the prisoner, not just those arising out of the same transaction between the same parties. The second sentence satisfactorily advises that plaintiff has never filed a civil action, although it includes unnecessary information: that plaintiff has never dismissed, transferred, or disposed of an action after it was assigned to a judge.

However, plaintiff did not disclose the number of prior appeals from civil actions he has taken. Although it seems clear that if a plaintiff has never initiated a civil action regarding prison conditions, he or she has never taken an appeal from such an action. Even so, the Michigan Court of Appeals held in *Tomzek v Dep't of Corrections*, 258 Mich App 222, 224; 672 NW2d 511 (2003), "The statute does not predicate the disclosure requirement upon the prisoner having, in fact,

previously filed civil actions or appeals. In short, a prisoner must disclose the number, even if that number is zero. The failure to do so requires dismissal." *Id*. at 225.

The Court is bound by *Tomzek* and *Does* to GRANT defendants' motion and DISMISS plaintiff's complaint for failure to identify the number of prior appeals he has taken in civil actions. This dismissal is without prejudice to plaintiff initiating a new lawsuit. This is a final order resolving all issues in this case.

Date: 09/30/2026

Michael J. Riordan
Judge, Court of Claims