

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-4817

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JOHN F. CHAMBERS,

Plaintiff-Appellant,

VERSUS

WACKENHUT CORRECTIONS CORP., ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Louisiana  
(CA-91-1418)

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August 30, 1993

Before REAVLEY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:<sup>1</sup>

John F. Chambers, a *pro se* state prisoner, objects to the district court's dismissal, pursuant to 28 U.S.C. § 1915(d), of his civil rights action under 42 U.S.C. § 1983, which alleged, *inter alia*, that prison officials at the Allen Correctional Center (ACC) retaliated against him for his activities as a "jailhouse lawyer", in violation of the First Amendment. Because the court prematurely dismissed the complaint, we **REVERSE and REMAND**.

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<sup>1</sup> Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

I.

Chambers, a self-described "jailhouse lawyer", assisted inmate Roger Walls in March 1991, by filing a lawsuit (signed by Walls), which included, as part of the requested relief, that "jail house lawyer, John F. Chambers, ... be paid from Wackenhut Corrections Corporation \$200.00 dollars for drawing up this action, using his off duty time a[t] a rate of \$25.00 dollars an hour".<sup>2</sup> According to Chambers, Walls decided to include the compensation request upon learning that Chambers did not charge for legal work; Chambers admits to typing the complaint.

An incident report was subsequently filed, which stated that the compensation request specifically violated disciplinary rules and procedures, providing that "No inmate (counsel substitute or not) can sell or trade for value legal services of any sort". (Emphasis in original). Because Walls informed that Chambers suggested the lawsuit and typed it in its entirety, Chambers was charged with being a "threat to security", and placed in lockdown. After a hearing, the Disciplinary Board concluded that Chambers was guilty as charged; his appeal from that ruling was denied.

Chambers filed an *in forma pauperis* § 1983 complaint (subsequently amended), alleging, *inter alia*, that the disciplinary action was in retaliation for his activities as a jailhouse lawyer, and thus violated his First Amendment right to freedom of speech. The magistrate judge recommended that the complaint be dismissed

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<sup>2</sup> The action was based on the warden's alleged refusal to give Walls his incentive pay.

with prejudice as frivolous, without addressing the First Amendment claims; the district court adopted the recommendations.

## II.

A complaint may be dismissed as frivolous under § 1915(d) only where it lacks arguable basis in law or fact. **Denton v. Hernandez**, \_\_\_ U.S. \_\_\_, 112 S. Ct. 1728, 1733 (1992); that is, where the claims are based on "indisputably meritless legal theory[s]", or where the facts alleged "rise to the level of the irrational or the wholly incredible". **Id.** "An *in forma pauperis* complaint may not be dismissed, however, simply because the court finds the plaintiff's allegations unlikely." **Id.** We review for abuse of discretion. In conducting that review here, we note that the First Amendment claim was not addressed in district court. **Id.** at 1734.

To obtain relief under § 1983, Chambers must prove, *inter alia*, that the named defendants deprived him of a constitutional or statutory right. *E.g.*, **Hernandez v. Maxwell**, 905 F.2d 94, 95 (5th Cir. 1990). Our circuit has not precisely addressed whether an inmate has a constitutional right to be *free from retaliation* for his lawyering activities on behalf of fellow inmates; however, others have, with differing results. See **Newsom v. Norris**, 888 F.2d 371, 375-77 (6th Cir. 1989); **Gassler v. Rayl**, 862 F.2d 706, 707-08 (8th Cir. 1988); **Adams v. James**, 784 F.2d 1077, 1080-83 (11th Cir. 1986); **Buise v. Hudkins**, 584 F.2d 223, 230 (7th Cir. 1978), *cert. denied*, 440 U.S. 916 (1979). Accordingly, Chambers's complaint does not lack an arguable basis in law.

Moreover, Chambers's supporting factual allegations are not baseless. Broadly construing the complaint, Chambers alleges that prison officials misapplied the disciplinary rules in order to punish him for his legitimate lawyering activities, contravening an earlier consent decree (to which Chambers was a party). In support, he alleges, *inter alia*, that in 1983, a secretary with the Department of Public Safety and Corrections stated that a grievance complaint letter by Chambers, which contained a request for compensation, was not a "threat to security", and thus overturned an incident report to the contrary; that he has subsequently filed many administrative grievances containing requests for filing fees without reprisal; that Captain Anderson was ordered to "lock up the plaintiff, period" without an adequate investigation; that the penalties imposed, including lockdown, were not in accordance with the penalty structure set forth in the disciplinary rules; and that members of the ACC Disciplinary Board had lawsuits against them by Chambers in his capacity as a jailhouse lawyer. In view of the foregoing, Chambers's allegations of retaliation do not rise to the level of the "irrational or the wholly incredible"; thus, his claim meets the bare minimum requirements of § 1915(d).

Because Chambers's complaint states an arguable basis in law and in fact, the district court improperly dismissed it as frivolous. In so holding, we emphasize that we express no opinion as to the merits of Chambers's asserted right to be free from

retaliation for lawyering activities, except to state that the legal issue is not meritless.

III.

For the foregoing reasons, the judgment of the district court is **REVERSED** and this matter is **REMANDED** for further proceedings consistent with this opinion.

**REVERSED AND REMANDED.**