

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT  
CIVIL DIVISION  
No.

JOSEPH "JABIR" POPE, pro se,  
plaintiff,

Vs.

SEAN MEDEIROS,  
Superintendent of MCI Norfolk,  
and  
REBECCA DONAHUE,  
Disciplinary Hearing Officer,  
Massachusetts Department of Correction,

---

C O M P L A I N T

---

STATEMENT OF THE CASE

This is an action in the nature of certiorari which seeks to correct substantial errors of law in a disciplinary proceeding in which the plaintiff was subjected to sanctions and serious adverse consequences. The plaintiff also seeks a declaratory judgment asking that his rights in this matter, as well as the legal validity of policies and procedures involved, be reviewed and declared by the court. The plaintiff also seeks damages under 42 U.S.C. ss. 1983 for violations of his civil rights and the deprivation of constitutional protections both state and federal. He moves herein under G.L. c. 249, ss. 4, M.G.L. C. 231A, and 42 U.S.C. ss. 1983.

PARTIES

1. Joseph "Jabir" Pope is a Massachusetts resident currently in the custody of the Department of Correction serving a life sentence, and who is currently housed at MCI Norfolk.

Joseph "Jabir" Pope is the pro se plaintiff in this matter at bar.

2. Defendant Sean Medeiros is an employee of the Department of Correction and at all times relevant to this matter at bar was the Superintendent of MCI Norfolk, a prison in the Commonwealth.

3. Defendant Rebecca Donahue is an employee of the Department of Correction and at all times relevant to this matter at bar was the Disciplinary Hearing Officer (DHO) who presided at the disciplinary hearing in this case.

#### FACTS

3. The plaintiff has been the host of the radio show "Voices Behind The Wall" since about June of 2015.

4. The plaintiff effectuates this radio show by calling into TOUCH 106.1 FM radio station in Boston over the prison phone system with his voice, and the voices of those he interviews, being broadcast live over the air.

5. The plaintiff operated his radio show at least once a month, sometimes more - with increasing regularity due to the popularity of the show - and TOUCH 106.1 would often replay shows for the listeners pleasure.

6. The plaintiff would interview other prisoners at the state prison he is held at (MCI Norfolk) by passing the telephone handset back and forth.

7. The plaintiff interviewed numerous prisoners over the two (2) years he hosted the radio show and this was known to the defendants as investigators had once taken the ID cards of five (5) men who participated in the show after a guard tower saw them passing the handset. No action was taken.

8. On January 5, 2017 the plaintiff began to interview well

known Prisoner Rights Activist, Timothy J. Muise, also a prisoner at MCI Norfolk, on the topic of "Lack Of Staff Accountability Within the Department of Correction". The show started just like it always did with the TOUCH 106.1 Radio Disc Jockey and Commentator, Charles Clemons, introducing the plaintiff and turning the airway over to him.

9. After several minutes of interviewing Mr. Muise, where Muise criticized the practices and policies of the DOC, an electronic voice came over the phone system which stated, "goodbye" and the call was terminated.

10. The plaintiff called back, was reconnected, again began to interview Muise, but was again cutoff in the same manner. Two more attempts to reconnect were made and both resulted in the same phone system computer termination of the calls.

11. The plaintiff hung up the phone and he and Muise returned to their respective cellblocks in the prison. Approximately forty five (45) minutes later investigators from the Inner Perimeter Security team (IPS) brought the plaintiff and Muise to solitary confinement on Awaiting Action/Pending Investigation status.

12. On the same day of the radio show, Thursday, January 5, 2017, IPS Investigator Benjamin Starta wrote both the plaintiff and Muise disciplinary reports detailing the exact same charges. Those charges were;

a. Use of mail or telephone in violation of established regulations.

b. Violating any departmental rule or regulation, or any other rule, regulation, or condition of an institution or community based program.

c. Attempting to commit any of the above offenses, making plans to commit any of the above offenses or aiding another person to commit any of the above offenses shall be considered the same as the commission of the offense itself.

13. When served with these disciplinary reports both the plaintiff and Muise were offered the chance to plead "guilty", but both refused and requested a hearing in accordance with the disciplinary regulations. The plaintiff's disciplinary report (d-report) was No. 379425.

14. On Tuesday, January 10, 2017, Lt. Purcell the commander of the solitary confinement unit, notified the plaintiff that his d-report (No. 379425) would be dismissed and that a "new" d-report would be issued. The plaintiff also learned that Muise had been told that his d-report would also be dismissed and that a new report would be issued.

15. On that same day, Tuesday, January 10, 2017, a new d-report was in fact written, No. 379689, which was much more detailed in its offense description and which was diametrically opposed to the first d-report (379425), even though it contained the same exact three (3) charges that the first d-report listed.

16. The charges on the new d-report (379689), which were exactly the same as the first d-report (379425) were all "Category 4" charges which call for no solitary confinement time.

17. Both the plaintiff and Muise were held in solitary confinement until Friday, January 20, 2017, even though there was no investigation and the first d-report (379425) had been written the same day as the radio show itself.

18. The plaintiff requested a hearing on d-report No. 379689 and this hearing was held before defendant Rebecca Donahue on Tuesday, March 7, 2017 at MCI Norfolk. The plaintiff was represented by a student attorney from Boston College, Andrew Emerson.

19. The defendant, Rebecca Donahue, released her hearing results on Tuesday, March 13, 2017. She found the plaintiff guilty of two (2) charges;

a. Use of mail or telephone in violation of established regulations.

b. Violating any departmental rule or regulation, or any other rule, regulation, or condition of an institution or community based program.

20. The plaintiff's student attorney filed a timely appeal of defendant Donahue's decision pointing out serious errors of law and constitutional violations. This appeal was filed on 03 /28 /2017.

21. Defendant Sean Medeiros denied the plaintiff's appeal on 03 /31 /2017.

#### FIRST CAUSE OF ACTION: CERTIORARI REVIEW

22. The plaintiff asks the Court to review the proceedings at the heart of this matter for errors of law, including, but not limited to, the fact that the second d-report was written outside of the regulatory time limits and that the defendants "back dated" a time limit waiver which was never produced to the plaintiff or his counsel. That the defendants used "selective enforcement" in writing the plaintiff a d-report only because he had a critic of DOC policies and procedures on his show as a guest. The facility had clear knowledge of the show, never took any action for two (2) years, and then only took action when the plaintiff hosted a critic of the DOC. That the defendants applied policies and regulations which are written in violation of the plaintiff's constitutional rights, both state and federal, and that these policies and regulation do not afford the least restrictive means to exercise the right of free speech and communication with the media. That the description of the offenses alleged does not meet the language of the charges levied. That vital

exculpatory evidence, in the form of email communications, was withheld from the plaintiff and would have shown the selective enforcement in violation of free speech protections. That the policies alleged to have been violated were not in fact applicable as no three way or conference calls were made and contact with the media is in fact allowable as the plaintiff has previously appeared on WBUR radio as part of the American Veterans In Prison group. As well as for any other errors of law the court may so find.

#### SECOND CAUSE OF ACTION: DECLARATORY JUDGMENT

23. That the Court issue a declaratory judgment detailing the plaintiff's right to access the media in the least restrictive means possible and that the DOC's policies and regulations do not allow for such access. That the plaintiff had the right to use the telephone to call the radio station and conduct his radio show as there were no security or penology issues at risk. That the plaintiff had the right to be free from cruel and unusual punishment in the form of confinement in solitary on "Category 4" charges after the investigation was complete. As well as any other such declarations of right the court may wish to issue.

#### THIRD CAUSE OF ACTION: DAMAGES / CIVIL RIGHTS ACT

24. That the Court award \$75,000.00 in damages for the chilling of the plaintiff's free expression. The plaintiff has rights to be free from such violations as protected under the First and Fourteenth Amendments to the United States Constitution as well as under Article 16 of the Massachusetts Constitution That the defendants retaliated against the plaintiff due to his exercise of constitutionally protected rights and that he was damaged in a myriad of ways as a result;

- a. 15 days in solitary confinement on charges that do not carry solitary confinement sanctions.
- b. Loss of contact visits while in solitary.
- c. Loss of access to clean drinking water while in solitary.
- d. Loss of full law library access in solitary.
- e. Loss of his seniority/good behavior earned single occupancy cell.
- f. Loss of institutional employment.
- g. Illegal sanction of double occupancy cell, top bunk, with vertigo and anxiety related conditions.
- h. Illegal sanction of loss of right to work for six (6) months.
- i. Loss of full access to religious services while in solitary.
- j. Any other damages the Court may recognize.

#### RELIEF REQUESTED

25. Review of administrative proceedings correcting the errors of law by vacating the disciplinary findings against the plaintiff, with an ORDER that the plaintiff be restored to his single cell status, employment status, and seniority status.

26. Issue a declaration of the plaintiff's rights in this case including, but not limited to, the right to due process which was denied at the disciplinary hearing, the right to access the media in the least restrictive means, the right to exercise free speech in regards to conditions of confinement, the right to be free from cruel and unusual punishment such as confinement in solitary, and any other such rights the Court may wish to declare.

27. Order damages in the amount of \$75,000.00 for the chilling of the plaintiff's free expression and retaliation for the

exercise of constitutionally protected activities. Rule that

28. Issue a declaration that the policies, regulations, and rules at the heart of this matter are too vague, do not offer the least restrictive means of exercising the protected rights they pertain to, and are legally unsound.

29. Afford any further relief that the Court deems just and fit.

Respectfully Submitted,

\_\_\_\_/\_\_\_\_/\_\_\_\_

X

\_\_\_\_\_  
Joseph "Jabir" Pope  
Pro Se  
MCI Norfolk  
PO Box 43  
Norfolk, MA  
02056-0043



SUFFOLK, ss

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT  
CIVIL ACTION  
No. T/B/A

JOSEPH "JABIR" POPE, pro se,  
plaintiff,

Vs.

SEAN MEDEIROS,  
Superintendent of MCI Norfolk,  
and  
REBECCA DONAHUE,  
Disciplinary Hearing Officer,  
defendants,

---

PLAINTIFF'S MOTION TO  
SERVE VIA FIRST CLASS CERTIFIED MAIL

---

NOW COMES THE PLAINTIFF, Joseph "Jabir" Pope, who does herein respectfully move that the Honorable Court ISSUE an ORDER allowing him to serve the two named defendants via First Class Certified U.S. mail, return receipt. As compelling grounds for the instant motion the plaintiff offers the following;

1. The plaintiff is an incarcerated Massachusetts resident confined at the state prison MCI Norfolk.

2. Both defendants are employees of the Massachusetts Department of Corrections and keep state offices.

3. It would be expedient and serve the judicial economy if the plaintiff was allowed to serve the defendants via the alternative service means of First class Certified U.S. mail, return receipt.

WHEREFORE, the pro se plaintiff prays that the Honorable Court ALLOW the instant motion in its entirety and ORDER that he be able to serve the defendants by the requested alternative form of service.

Respectfully Submitted,

\_\_\_\_/\_\_\_\_/\_\_\_\_

X \_\_\_\_\_  
Joseph "Jabir" Popee  
Pro se  
MCI Norfolk  
PO Box 43  
Norfolk, MA  
02056-0043