

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 21-2394

MAJOR MIKE WEBB, d/b/a Friends for Mike Webb, d/b/a Major Mike Webb for U.S. Congress (VA8), d/b/a Major Mike Webb for VA, d/b/a Major Mike Webb for APS Board,

Plaintiff - Appellant,

v.

ANTHONY S. FAUCI, in official and individual capacities; NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASE; ROCHELLE WALENSKY, in official and individual capacities; CENTERS FOR DISEASE CONTROL AND PREVENTION; JANET WOODCOCK, in official and individual capacities; UNITED STATES FOOD AND DRUG ADMINISTRATION; MOHAMMED NORMAN OLIVER, in official and individual capacities; VIRGINIA DEPARTMENT OF HEALTH; PFIZER, INC.; MODERNATX INC.; JOHNSON & JOHNSON INC.; FACEBOOK, INC.; UNIVERSITY OF VIRGINIA; DONALD S. BEYER, in individual and official capacities; TIMOTHY M. KAIN, in official and individual capacities; MARK R. WARNER, in official and individual capacities; JUSTIN M. WILSON, in official and individual capacities; DIONNE HARDY, in official and individual capacities; OFFICE OF MANAGEMENT & BUDGET; JASON S. MIYARES, in official and individual capacities; OFFICE OF THE STATE ATTORNEY GENERAL; GLENN YOUNGKIN, in official and individual capacities; BIONTECH SE; JANSSEN GLOBAL SERVICES, LLC; JENNIFER R. PSAKI, in official and individual capacities; WHITE HOUSE COMMUNICATIONS AGENCY; VIVEK MURTHY, in official and individual capacities; OFFICE OF THE SURGEON GENERAL; LLOYD J. AUSTIN, in official and individual capacities; UNITED STATES DEPARTMENT OF DEFENSE; CHRISTINE E. WORMOTH, in official and individual capacities; DEPARTMENT OF THE ARMY; XAVIER BECCERA, in official and individual capacities; UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES; TED BRITT FORD OF FAIRFAX; RICHARD D. HOLCOLM, in official and individual capacities; VIRGINIA DEPARTMENT OF MOTOR VEHICLES; INGRID H. MORROY, in official and individual capacities; COMMISSIONER OF REVENUE FOR COUNTY OF ARLINGTON; CAPITAL

INVESTMENT ADVISORS, LLC; A-1 TOWING OF NORTHERN VIRGINIA;
JOHN AND JANE DOES,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at
Richmond. M. Hannah Lauck, District Judge. (3:21-cv-00432-MHL)

Submitted: May 24, 2022

Decided: May 26, 2022

Before NIEMEYER, KING, and RICHARDSON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Michael David Webb, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Michael David Webb, aka Major Mike Webb, appeals the district court's order dismissing his civil complaint without prejudice for failure to comply with the court's order directing him to file a corrected in forma pauperis application. Under Fed. R. Civ. P. 41(b), a district court may dismiss an action based on a plaintiff's failure to comply with a court order as long as the court has warned the plaintiff that noncompliance will result in dismissal. *See Ballard v. Carlson*, 882 F.2d 93, 95-96 (4th Cir. 1989). We review a district court's dismissal under Rule 41(b) for abuse of discretion. *Attikisson v. Holder*, 925 F.3d 606, 620 (4th Cir. 2019).

We have reviewed the record and find no abuse of discretion. Accordingly, we affirm the district court's order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: May 26, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-2394
(3:21-cv-00432-MHL)

MAJOR MIKE WEBB, d/b/a Friends for Mike Webb, d/b/a Major Mike Webb for U.S. Congress (VA8), d/b/a Major Mike Webb for VA, d/b/a Major Mike Webb for APS Board

Plaintiff - Appellant

v.

ANTHONY S. FAUCI, in official and individual capacities; NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASE; ROCHELLE WALENSKY, in official and individual capacities; CENTERS FOR DISEASE CONTROL AND PREVENTION; JANET WOODCOCK, in official and individual capacities; UNITED STATES FOOD AND DRUG ADMINISTRATION; MOHAMMED NORMAN OLIVER, in official and individual capacities; VIRGINIA DEPARTMENT OF HEALTH; PFIZER, INC.; MODERNATX INC.; JOHNSON & JOHNSON INC.; FACEBOOK, INC.; UNIVERSITY OF VIRGINIA; DONALD S. BEYER, in individual and official capacities; TIMOTHY M. KAINES, in official and individual capacities; MARK R. WARNER, in official and individual capacities; JUSTIN M. WILSON, in official and individual capacities; DIONNE HARDY, in official and individual capacities; OFFICE OF MANAGEMENT & BUDGET; JASON S. MIYARES, in official and individual capacities; OFFICE OF THE STATE ATTORNEY GENERAL; GLENN YOUNGKIN, in official and individual capacities; BIONTECH SE; JANSSEN GLOBAL SERVICES, LLC; JENNIFER R. PSAKI, in official and individual capacities; WHITE HOUSE COMMUNICATIONS AGENCY; VIVEK MURTHY, in official and individual capacities; OFFICE OF THE SURGEON GENERAL; LLOYD J. AUSTIN, in official and individual

capacities; UNITED STATES DEPARTMENT OF DEFENSE; CHRISTINE E. WORMOTH, in official and individual capacities; DEPARTMENT OF THE ARMY; XAVIER BECCERA, in official and individual capacities; UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES; TED BRITT FORD OF FAIRFAX; RICHARD D. HOLCOLM, in official and individual capacities; VIRGINIA DEPARTMENT OF MOTOR VEHICLES; INGRID H. MORROY, in official and individual capacities; COMMISSIONER OF REVENUE FOR COUNTY OF ARLINGTON; CAPITAL INVESTMENT ADVISORS, LLC; A-1 TOWING OF NORTHERN VIRGINIA; JOHN AND JANE DOES

Defendants - Appellees

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

**MAJOR MIKE WEBB, d/b/a FRIENDS FOR
MIKE WEBB, MAJOR MIKE WEBB FOR
CONGRESS (VA8), MAJOR MIKE WEBB
FOR VA and MAJOR MIKE WEBB APS BOARD,**

Plaintiff,

v.

Civil Action No. 3:21CV432

**ANTHONY S. FAUCI, *in official and
individual capacities, et al.***

Defendants.

ORDER

On July 7, 2021, *pro se* Plaintiff Mike Webb filed a “Petition for Declaratory Relief, Preliminary Injunction and Writ of Mandamus” along with an Application to Proceed *In Forma Pauperis*. (ECF No. 1.) Webb did not complete the correct form to proceed *in forma pauperis*. Therefore, the Court DIRECTS the Clerk to send a copy of the *in forma pauperis* application to Webb. Webb must complete the form, answering the questions as accurately as possible, and file it with the Court no later than August 16, 2021. Failure to comply with this request will result in the case being dismissed without prejudice.

Webb submitted a Ghostwriting Form with his submission stating that he did not receive assistance in preparing his Petition. *See* E.D. Va. Loc. Civ. R. 83.1(M). However, the Ghostwriting Form does not contain his signature. Therefore, Court ORDERS Webb to file a signed Ghostwriting Form (a copy of which is enclosed) and file it with the Court no later than August 16, 2021. Failure to comply with this request will result in the case being dismissed

without prejudice.

The Court has reviewed the proffered Petition filed by Webb, which the Court liberally construes as a Complaint. Through the Complaint, the Court discerns that Webb seeks to bring claims against Defendants for civil rights or federal law violations stemming from the COVID-19 pandemic. The proffered Complaint does not comply with Federal Rule of Civil Procedure 8, which requires a short and plain statement of the grounds for this Court's jurisdiction and Webb's claims for relief.¹

As a result, the Court ORDERS that the Clerk provisionally file the proffered Complaint; and it is further ORDERED that, no later than August 16, 2021, Webb SHALL file an Amended Complaint, which outlines in simple and straightforward terms why he thinks that he is entitled to relief and why the Court has jurisdiction over his case. *See* Fed. R. Civ. P. 8(a)(1) and (2).

The amended complaint SHALL COMPLY with the following directions:

1. At the very top of the amended pleading, Webb must place the following caption in all capital letters: "AMENDED COMPLAINT FOR CIVIL ACTION NUMBER: 3:21cv432."
2. The first paragraph of the particularized amended complaint must contain a list of defendant(s). Thereafter, in the body of the particularized amended complaint, Webb must set forth legibly, in separately numbered paragraphs a short statement of the facts giving rise to his claims for relief. Thereafter, in separately captioned sections, Webb must clearly identify each federal or state law allegedly violated. Under each section, Webb must list each defendant purportedly liable under that legal theory and explain why he believes each defendant is liable to him. Such

¹ The Federal Rules of Civil Procedure require that "[a] pleading that states a claim for relief . . . contain: (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support; [and] (2) a short and plain statement of the claim showing that the pleader is entitled to relief" Fed. R. Civ. P. Rule 8(a)(1)–(2). To satisfy Rule 8, Webb must provide the Court with facts and specific allegations to support his claims for relief.

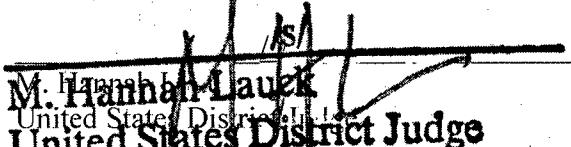
explanation should reference the specific numbered factual paragraphs in the body of the particularized amended complaint that support that assertion.

3. Webb shall also include the relief he requests – what in the law is called a “prayer for relief.”
4. The particularized amended complaint must stand or fall on its own accord. Webb may not reference statements in the prior complaint.
5. The particularized amended complaint must omit any unnecessary incorporation of factual allegations for particular claims and any claim against any defendant that is not well-grounded in the law and fact. *See Sewraz v. Guice*, No. 3:08cv035, 2008 WL 3926443, at *2(E.D. Va. Aug. 26, 2008).

The failure to strictly comply with the Court’s directives and with applicable rules will result in DISMISSAL OF THIS ACTION WITHOUT PREJUDICE for failure to prosecute. *See Fed. R. Civ. P. 41(b)*.

Let the Clerk send a copy of this Order to Webb at his address of record.

It is so ORDERED.


M. Hannah Lauer
United States District Judge

Richmond, Virginia
Date: July 13, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

**MAJOR MIKE WEBB, d/b/a FRIENDS FOR
MIKE WEBB, MAJOR MIKE WEBB FOR
CONGRESS (VA8), MAJOR MIKE WEBB
FOR VA and MAJOR MIKE WEBB APS BOARD,**

Plaintiff,

v.

Civil Action No. 3:21cv432

**ANTHONY S. FAUCI, *in his official and
individual capacities, et al.*,**

Defendants.

ORDER

On July 7, 2021, *pro se* Plaintiff Michael D. Webb filed a “Petition for Declaratory Relief, Preliminary Injunction and Writ of Mandamus” along with an application to proceed *in forma pauperis*. (ECF Nos. 1, 1-1.) The Court liberally construed Webb’s Petition as a complaint and provisionally filed Webb’s Complaint. (Order 2, ECF No. 2.) Because Webb did not submit the correct *in forma pauperis* application, and because Webb’s Complaint did not appear to comply with Federal Rule of Civil Procedure 8, the Court ordered Webb to submit an amended complaint along with the correct *in forma pauperis* application no later than August 16, 2021. (*Id.* 1-2.) The Court ordered that Webb’s Amended Complaint “outline[] in simple and straightforward terms why [Webb] thinks that he is entitled to relief and why the Court has jurisdiction over his case.” (*Id.* 2.) The Court warned that “failure to strictly comply with the Court’s directives and with applicable rules will result in DISMISSAL OF THIS ACTION WITHOUT PREJUDICE for failure to prosecute.” (*Id.* 3.)

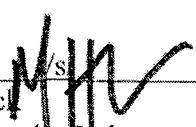
On August 13, 2021, Webb timely filed his Amended Complaint (the “Amended Complaint”), (ECF No. 4), along with the requisite ghostwriting form, (ECF No. 4-1). Webb also filed another *in forma pauperis* application. (ECF No. 3.) However, this application was a mere photocopy of the previous incorrect form he had already submitted. (*Compare id. with* ECF No. 1.)

The same day, Webb filed a Motion for Temporary Restraining Order, (ECF No. 6), and a Motion for Summary Judgement on Vaccines, (ECF No. 7). Three days later, Webb filed an Emergency Motion for Temporary Restraining Order, (ECF No. 8), and an Emergency Motion for Summary Judgment Against the Vaccine[] Policy, (ECF No. 9). On September 2, Webb filed a Memorandum in Support of his Motion for Temporary Restraining Order and Motion for Summary Judgment on Vaccines. (ECF No. 10.) Three weeks after that, Webb filed an Emergency Motion for Temporary Restraining Order, or, in the Alternative, Summary Judgment on Reply to FOIA Request, along with supporting exhibits. (ECF No. 11.) On September 30, Webb filed a letter regarding “Emergency Temporary Restraining Order Hearing on [FOIA] Disclosure,” (ECF No. 12), and around two weeks later, he filed a second letter on the same matter, (ECF No. 13). On October 8, Webb filed a Praecipe directing the U.S. Marshals to serve Defendants. (ECF No. 14.) Four days after that, Webb filed a Second Notice of Emergency Motion Hearing, (ECF No. 15), and three days later filed a Third Notice of Emergency Motion Hearing, (ECF No. 16). On October 15, he filed a third letter regarding “Emergency Temporary Restraining Order Hearing,” (ECF No. 17), and a “Waiver of Service, Amended and Consolidated Action,” (ECF No. 18).

Federal Rule of Civil Procedure 41(b) allows for dismissal of an action “[i]f the plaintiff fails to prosecute or to comply with [the Federal Rules] or a court order.” Fed. R. Civ. P. 41(b). Here, the Court provided Webb with a copy of the correct *in forma pauperis* application and ordered him to submit a completed version of that form. (Order 1; ECF No. 2-1.) The Court also warned Webb that fairly to strictly comply with the Court’s directives would result in dismissal of this action without prejudice. (Order 3.) Webb nonetheless submitted an identical copy of the incorrect form he provided along with his original Complaint. (See ECF Nos. 1, 3.) For this reason, the Court DISMISSES THIS ACTION WITHOUT PREJUDICE. The Court also DENIES all outstanding motions in this case as moot.

Should Webb wish to appeal this Order, written notice of appeal must be filed with the Clerk of Court within sixty (60) days of the date of entry hereof. Failure to file a notice of appeal within the stated period may result in the loss of the right to appeal.

It is SO ORDERED.


/s/
M. Hannah Lauck
United States District Judge

Date: 10-29-21
Richmond, Virginia