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OPINION DENYING EXTRAORDINARY WRIT, U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT (OCTOBER 31, 2024)

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

IN RE: ROGER LEE MORSE,

Petitioner.

No. 25-1252

On Petition for Extraordinary Writ to the United States District Court for the Eastern District of Virginia, at Richmond. (3:21-cv-00168-MHL)

Submitted: October 23, 2025.
Decided: October 31, 2025.

Petition denied by unpublished per curiam opinion.

Before: NIEMEYER and HEYTENS, Circuit Judges, and KEENAN, Senior Circuit Judge.

Sean Christopher Timmons, TULLY RINCKEY PLLC, Sugar Land, Texas, for Petitioner.

Liza Shawn Simmons, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Respondent.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Roger Lee Morse petitions for a writ of extraordinary relief under the All Writs Act, 28 U.S.C. § 1651(a), asking that this court reopen and dismiss Morse's prior appeal of the district court's order dismissing, pursuant to Fed. R. Civ. P. 41(b), Morse's second amended civil complaint, and instruct the district court to rule on the merits of Morse's Fed. R. Civ. P. 60(b) motion. We conclude that Morse is not entitled to relief.

Federal courts "may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). However, petitioners may not obtain relief under § 1651(a) when there is another available remedy. *See United States v. Swaby*, 855 F.3d 233, 238 (4th Cir. 2017); c.*f. In re Lockheed Martin Corp.*, 503 F.3d 351, 353 (4th Cir. 2007) (reiterating that mandamus may not be used as a substitute for appeal).

We have reviewed Morse's petition and conclude that relief under § 1651(a) is not warranted. Accordingly, we deny Morse's petition. 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.

PETITION DENIED

ORDER REQUIRING MR. MORSE TO AMEND HIS COMPLAINT, U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA (MAY 10, 2021)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ROGER LEE MORSE,

Plaintiff,

v.

VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL.,

Defendant.

Civil Action No. 3:21-cv-0168

Before: M. Hannah LAUCK, U.S. District Judge.

ORDER

This matter comes before the Court on its own initiative. On March 29, 2021, the Court issued an Order directing *pro se* Plaintiff Roger Lee Morse to file the correct *in forma pauperis* form and an amended complaint no later than May 3, 2021. (ECF No. 2.) To date, the Court has not received a revised *in forma pauperis* application. Rather, on March 30, 2021, Morse paid the filing fee. On April 30, 202 I, Morse

filed a "Motion for Reconsideration," (ECF No. 6), which the Court broadly construes as an Amended Complaint.[1]

Morse's Amended Complaint—the Motion for Reconsideration—does not satisfy the requirements of Federal Rule of Civil Procedure 8. Morse seems to indicate that he wants to challenge court rulings from an action filed roughly two decades ago in Case No. 01cv337 (E.D. Va 2001). (Am. Compl. 6, ECF No. 6.) From what the Court can discern, Morse suggests that he sought back pay and benefits from a previous employer, but the Court ruled against him in that prior litigation. *(Id.)* Morse states that he is fully aware of "Rocket Docket tactics," but "[t]he Court cannot maliciously and with malice dismiss Plaintiffs Title VII claims in order to help the opposing party out." *(Id.* 9.) Morse also makes vague allegations of race, color, retaliation, and age discrimination against various parties. (Compl. 9-10, ECF No. 1-1.) Although the Court must liberally construe a *pro se* litigant's pleadings when determining whether such pleadings satisfy Rule 8, Morse's pleadings do not satisfy the requirements of that Rule.

Federal Rule of Civil Procedure 8 requires a showing of entitlement to relief, more than just bare allegations. *Francis v. Giacomelli,* 588 F.3d 186, 192 (4th Cir. 2009). The well-pleaded facts must "permit

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[1] Because Morse proceeds *pro se.* the Court liberally construes his filings. *See Erickson v. Pardus,* 551 U.S. 89, 94 (2007) (. . . A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.") (internal quotation marks and citations omitted).

the court to infer more than the mere possibility of misconduct." *Id.* at 193. In doing so, a court is not bound to accept as true "legal conclusions couched as factual allegations." *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 555-56 (2007). "[T]he court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief can be granted . . . ." 28 U.S.C. § 1915(e)(2)(B)(ii); *see Ashcroft, v. Iqbal,* 556 U.S. 662, 681 (2009); *Twombly,* 550 U.S. at 558.

While long-standing practice allows a court to liberally construe prose pleadings, *Hill v. Braxton*, 277 F.3d 701, 707 (4th Cir. 2002), the principles requiring liberal construction are "not . . . without limits." *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4thCir.1985). A court need not "assume the role of advocate" nor attempt "to discern the unexpressed intent of the plaintiff." *Laber v. Harvey*, 438 F.3d 404, 413 n.3 (4th Cir. 2006).

Because Morse proceeds *pro se* and has now paid the filing fee for this civil action. The Court will allow him to again amend his complaint no later than June 15, 2021. The Amended Complaint SHALL COMPLY with the following directions:

1. At the very top of the amended pleading, Morse must place the following caption in all capital letters: "SECOND AMENDED COMPLAINT FOR CIVIL ACTION NUMBER: 3:21cv168."

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, Morse 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, Morse must clearly identify each federal or state law allegedly violated. Under each section, Morse must list each defendant purportedly liable under that legal theory and explain why he believes each defendant is liable to him. Such explanation should reference the specific numbered factual paragraphs in the body of the particularized amended complaint that support that assertion.

3. Morse 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. Morse may not reference statements in the prior complaints.

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). (ECF No. 59, at 9-10.)

Because Morse has paid the filing fee, he must also submit proposed summonses before he may proceed with his action against Defendants.

The Court DIRECTS the Clerk to send a copy of this Order to Plaintiff.

It is SO ORDERED.

/s/ M. Hannah Lauck
U.S. District Judge

Date 5/10/21
Richmond, Virginia

MEMORANDUM OPINION EXPLAINING DISMISSAL OF MR. MORSE'S ACTION, U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA (AUGUST 11, 2023)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ROGER LEE MORSE,

Plaintiff,

v.

VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL.,

Defendant.

Civil Action No. 3:21-cv-0168

Before: M. Hannah LAUCK, U.S. District Judge.

MEMORANDUM OPINION

This matter comes before the Court on *pro se* Plaintiff Roger Lee Morse's Second Amended Complaint, (ECF No. 65), and Motion to Request Legal Representation from the Virginia Attorney General as Mandated by the Virginia General Assembly Under Virginia Code § 44-93(a)(b) and§ 44-93.5 to Enforce

USERRA Law Under Federal Statute 38 U.S.C. §§ 4301-4335, (ECF No. 66).

Morse's Second Amended Complaint offends Federal Rule of Civil Procedure 8, which requires a short and plain statement of the grounds for this Court's jurisdiction and a statement of the claims showing that the plaintiff is entitled to relief. It also improperly disregards the Court's May 24, 2023 Order directing how Morse had to file his Second Amended Complaint. (ECF No. 59.)

The Court ordered that Morse file a Second Amended Complaint which "articulate[s] discreet causes of action, by count." (ECF No. 59, at 9.) The Court ordered that the Second Amended Complaint comply with the following directions:

1. At the very top of the amended pleading, Morse must place the following caption in all capital letters: "SECOND AMENDED COMPLAINT FOR CIVIL ACTION NUMBER: 3:21cv168."

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, Morse 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, Morse must clearly identify each federal or state law allegedly violated. Under each section, Morse must list each defendant purportedly liable under that legal theory and explain why he believes each defendant is liable to him. Such

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

3. Morse 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. Morse may not reference statements in the prior complaints.

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). (ECF No. 59, at 9-10.)

(ECF No. 59, at 9-10.) Morse was advised that his failure to strictly comply with these directives and with applicable rules would result in the dismissal of this action with prejudice. (ECF No. 59, at 10.)

The Court finds that Morse's Second Amended Complaint does not comply with the clear instructions set forth in the Court's May 24, 2023 Order. (ECF No. 59.) Specifically, the Second Amended Complaint (i) does not "in separately numbered paragraphs [set forth] a short statement of the facts giving rise to his claims for relief;"[1] (ii) does not "explain why he believes

[1] Consistent with Morse's previous Complaints, Morse's Second Amended Complaint is 63 pages long and includes 44 pages of exhibits. This is a far cry from Federal Rule of Civil Procedure

each defendant is liable to him . . . [and] reference the specific numbered factual paragraphs in the body of the particularized amended complaint that support that assertion;" and, (iii) does not "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." (ECF No. 59, at 10.) Pursuant to Federal Rule 41(b), the Court may dismiss an action when a plaintiff fails to comply with a court order. *See* Fed. R. Civ. P. 41(b); *Zaczek v. Fauquier Cty.,* 764 F. Supp. 1071, 1075 n.16 (E.D. Va. 1991) (citing *Link v. Wabash R. Co.,* 370 U.S. 626, 630 (1962)) (explaining that a court may "act on its own initiative" with respect to dismissals under Federal Rule 41 (b)). Accordingly, Morse's Second Amended Complaint is DISMISSED WITH PREJUDICE. (ECF No. 65.)

As to Morse's Motion to Request Legal Representation from the Virginia Attorney General as Mandated by the Virginia General Assembly Under Virginia Code § 44-93(a)(b) and § 44-93.5 to Enforce USERRA Law Under Federal Statute 38 U.S.C. §§ 4301-4335, (ECF

8's requirement for a short and plain statement of the grounds for this Court's jurisdiction and a statement of the claims showing that the plaintiff is entitled to relief.

Further, the first thirteen pages after Morse's list of defendants solely consist of arguments that he is entitled to legal representation, complaints about the undersigned's bias against him, and a recitation of proceedings that occurred in a 2021 case filed by Morse. (ECF No. 65, at 6-13.) As the Court has previously explained numerous times, (ECF Nos. 17, 22, 24), Morse is not entitled to counsel. The Court has also reviewed the Code of Conduct for United States Judges and 28 U.S.C. § 455(a) of the United States Code and concludes that no basis for disqualification or recusal exists.

No. 66), the Court has repeatedly explained to Morse that he is not entitled to counsel in this civil action, (ECF Nos. 17, 22, 24). Further, the Virginia Code sections cited by Morse make no mention of counsel at all. Accordingly, the Motion is DENIED. (ECF No. 66.)

An appropriate Order shall accompany this Memorandum Opinion.

/s/ M. Hannah Lauck
U.S. District Judge

Date 8/11/2023
Richmond, Virginia

ORDER REMANDING CASE TO THE DISTRICT COURT, U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT (FEBRUARY 26, 2024)

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ROGER LEE MORSE,

Plaintiff-Appellant,

v.

VIRGINIA DEPARTMENT OF CORRECTIONS; CHADWICK DOTSON, in his individual and official capacity as Director for the Virginia Department of Corrections; PATRICIA S. BISHOP, in her individual and official capacity as Director for the Virginia Retirement System; JOSEPH WALTERS, in his individual and official capacity as Deputy Director of Administration for Virginia Department of Corrections; BETH CABELL, in her individual and official capacity as Warden; TONY DARDEN, in his Individual and official capacity as Assistant Warden; KEVIN CLARK, in his individual and official capacity as Major, Correctional Officer; CHRISTOPHER M. GRAB; WILLIAM MUSE, in his individual and official capacity as Hearing Officer for the Office of Employment Dispute Resolution; CARL W. SCHMIDT, in his individual and official capacity as Hearing Officer for the Office of Employment Dispute Resolution; ROBIN H. LOW,

in her individual and official capacity as
Supervisor of Purchase of Prior Service
for the Virginia Retirement System,

Defendants-Appellees.

No. 23-2039

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. M. Hannah Lauck, District Judge. (3:21-cv-00168-MHL)

Submitted: February 22, 2024
Decided: February 26, 2024

Remanded by unpublished per curiam opinion.

Before: NIEMEYER and HEYTENS, Circuit Judges, and KEENAN, Senior Circuit Judge.

Roger Lee Morse, Appellant Pro Se. Ronald Nicholas Regnery, Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Roger Lee Morse seeks to appeal the district court's order dismissing Morse's second amended civil complaint pursuant to Fed. R. Civ. P. 41(b), and denying Morse's motion for the appointment of counsel. In civil cases, parties have 30 days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(l)(A), unless the district court extends the appeal period under Fed. R. App. P.

4(a)(5) or reopens the appeal period under Fed. R. App. P. 4(a)(6). "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." *Bowles v. Russell*, 551 U.S. 205,214 (2007).

The district court entered its dispositive order on August 11, 2023. Morse did not file his notice of appeal until October 2, 2023, which was 21 days after the appeal period expired, but within the 30-day excusable neglect period. Morse's notice of appeal and informal reply brief contain language that we liberally construe as a request for an extension of time to appeal. Accordingly, we remand the case to the district court for a determination of whether Morse can establish excusable neglect or good cause warranting an extension of the 30-day appeal period.* The record, as supplemented, will then be returned to this court for further consideration.

REMANDED

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* Under Rule 4(a)(5), the district court may extend the time to appeal if (i) a party moves for an extension of time within 30 days of the expiration of the appeal period and (ii) shows excusable neglect or good cause.

ORDER DEEMING MR. MORSE'S APPEAL TIMELY, U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA (MAY 1, 2024)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ROGER LEE MORSE,

Plaintiff,

v.

VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL.,

Defendant.

Civil Action No. 3:21-cv-0168

Before: M. Hannah LAUCK, U.S. District Judge.

ORDER

For the reasons stated in the accompanying Memorandum Opinion, the Court finds that Mr. Morse has established excusable neglect wan-anting an extension of the 30-day appeal period. Mr. Morse's October 2, 2023 Notice of Appeal, (ECF No. 70), is DEEMED TIMELY. Mr. Morse's Motion for Relief from Dismissal with Prejudice Under FRCP 60(b)(l) and 60(b)(6) is DENIED AS MOOT. (ECF No. 73.),

Let the Clerk send a copy of the Memorandum Opinion and this Order to all counsel of record, to Mr. Morse at his address of record, and to Nwamaka C. Anowi, Clerk, United States Court of Appeals for the Fourth Circuit, 1100 East Main Street, Suite 501, Richmond, VA 23219.

It is SO ORDERED.

/s/ M. Hannah Lauck
U.S. District Judge

Date 4/30/24
Richmond, Virginia

OPINION FINDING EXCUSABLE DELAY, U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA (MAY 1, 2024)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ROGER LEE MORSE,

Plaintiff,

v.

VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL.,

Defendant.

Civil Action No. 3:21-cv-0168

Before: M. Hannah LAUCK, U.S. District Judge.

MEMORANDUM OPINION

This matter comes before the Court on remand from the United States Court of Appeals for the Fourth Circuit, with directions to determine whether Plaintiff Roger Lee Morse "can establish excusable neglect or good cause warranting an extension of the

30-day appeal period." (ECF No. 76, at 3.)[1] For the reasons articulated below, the Court finds that Mr. Morse has established excusable neglect warranting an extension of the 30-day appeal period, rendering his October 2, 2023 Motion for Notification for Appeal (the "Notice of Appeal"), (ECF No. 70), timely.

I. Factual and Procedural Background

The Court begins with a summary of the case proceedings to date.

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[1] Pursuant to the Fourth Circuit's February 26, 2024 remand, this Court has jurisdiction over the limited question addressed in this opinion-whether Mr. Morse "can establish excusable neglect or good cause warranting an extension of the 30-day appeal period." (ECF No. 76, at 3.) Because Mr. Morse filed a Notice of Appeal on October 2, 2023, (ECF No. 70), but later filed on January 14, 2024 a Motion for Relief from Dismissal with Prejudice Under FRCP 60(b)(l) and 60(b)(6), (the "Motion to Reopen"), (ECF No. 73), the Court would have lacked jurisdiction to decide the Motion to Reopen. *See Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) ("The filing of a notice of appeal is an event of jurisdictional significance-it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal"); *see also Brickwood Contractors, Inc. v. Datanet Eng 'g Inc.*, 369 F.3d 385, 393 (4th Cir. 2004) (observing that the filing of a notice of appeal is jurisdictional in that it "establishes the point of time at which the subject-matter jurisdiction of the district court ends and that of the court of appeals begins"). Even the Fourth Circuit's February 26, 2024 limited remand would not allow the Court to decide the Motion to Reopen.

Because "a federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously," *Griggs*, 459 U.S. at 58, today's decision renders the Motion to Reopen moot. To the extent this Court would even have jurisdiction over it, it would be denied.

A. The Court Deems Mr. Morse's Initial Complaint and Subsequent "Motion for Reconsideration" Insufficient.

On March 12, 2021, Mr. Morse, proceeding *pro se*, filed an application to proceed *in forma pauperis* and attached a proposed Complaint. (ECF No. 1.) On March 29, 2021, the Court issued an Order stating that Mr. Morse's "proffered Complaint, which numbers roughly one hundred pages . . . offends Federal Rule of Civil Procedure 8, which requires a short and plain statement of the grounds for this Court's jurisdiction and Mr. Morse's claims for relief." (ECF No. 2, at 2.) The Court ordered Mr. Morse to file, by May 3, 2021, an Amended Complaint "which outlines in simple and straightforward terms why Mr. Morse thinks that he is entitled to relief and why the Court has jurisdiction over his case." (ECF No. 2, at 2 (citing Fed. R. Civ. P. 8(a)(l) and (2).)

On April 30, 2021, Mr. Morse filed a "Motion for Reconsideration", (ECF No. 6), which, in deference to Mr. Morse's *pro se* status, "the Court broadly construe[d] as an Amended Complaint." (ECF No. 7, at 1.) On May 10, 2021, the Court issued an Order explaining that Mr. Morse's "Amended Complaint", i.e., the Motion for Reconsideration, "does not satisfy the requirements of Federal Rule of Civil Procedure 8", explaining that Rule 8 "requires a showing of entitlement to relief, more than just bare allegations." (ECF No. 7, at 1-2 (*citing Francis v. Giacomelli*, 588 F.3d 186, 192 (4th Cir. 2009)).) The Court then ordered Mr. Morse to file an Amended Complaint by June 15, 2021. (ECF No. 7, at 3.)

B. The Court Deems Mr. Morse's Amended Complaint Insufficient.

On December 15, 2021, after the Court granted Mr. Morse multiple deadline extensions while he attempted to obtain counsel, (ECF Nos. 9-12, 14-17), Mr. Morse filed an Amended Complaint *pro se*. (ECF No. 21.) On May 24, 2023, the Court issued an Order concluding that the Amended Complaint violated Federal Rule of Civil Procedure 8, and granted Defendants' respective Motions to Dismiss on that basis. (ECF No. 59, at 8-9.) In deference to Mr. Morse's *pro se* status, the Court dismissed his Amended Complaint without prejudice and granted him leave to file a Second Amended Complaint by June 14, 2023. (ECF No. 59, at 2.) The Court ordered that the Second Amended Complaint must "articulate [discrete] causes of action, by count." (ECF No. 59, at 9.) The Court ordered that the Second Amended Complaint comply with the following directions:

1. At the very top of the amended pleading, Morse must place the following caption in all capital letters: "SECOND AMENDED COMPLAINT FOR CIVIL ACTION NUMBER: 3:21cv168."

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, Morse 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, Morse must clearly identify each federal or state law allegedly violated. Under each section, Morse must list each defendant purportedly liable

under that legal theory and explain why he believes each defendant is liable to him. Such explanation should reference the specific numbered factual paragraphs in the body of the particularized amended complaint that support that assertion.

3. Morse 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. Morse may not reference statements in the prior complaints.

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). (ECF No. 59, at 9-10.)

The Court advised Mr. Morse that his failure to strictly comply with these directives and with applicable rules would result in the dismissal of this action with prejudice. (ECF No. 59, at 10.) At Mr. Morse's request, the Court later extended his deadline to file a Second Amended Complaint to August 7, 2023. (ECF No. 62, at 1.)

C. The Court finds Mr. Morse' Second Amended Complaint Insufficient, and Dismisses it With Prejudice.

On August 8, 2023, Mr. Morse filed his Second Amended Complaint. (ECF No. 65.) Three days later,

the Court issued a Memorandum Opinion finding that the Second Amended Complaint offended Rule 8, and "also improperly disregard[ed] the Court's May 24, 2023 Order directing how Mr. Morse had to file his Second Amended Complaint." (ECF No. 67, at 1 (citing ECF No. 59).) As a result, the Court dismissed Mr. Morse's Second Amended Complaint with prejudice. (ECF No. 67, at 3.) In its August 11, 2023 Final Order, the Court advised Mr. Morse that if he wished to appeal, he must file "a written notice of appeal . . . with the Clerk of the Court within sixty (60) days of the date of entry hereof." (ECF No. 68, at 1.) The deadline announced by the Court in its Final Order was incorrect. Mr. Morse's Notice of Appeal was due within 30 days, not 60 days. *See* Fed. R. App. P. 4(a)(l)(A).[2]

On October 2, 2023, fifty-two days after entry of the August 11, 2023 Final Order, Mr. Morse filed a Notice of Appeal. (ECF No. 70, at 1.)

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[2] Federal Rule of Appellate Procedure 4(a)(l)(A) provides:

> (a) Appeal in a Civil Case.
>
> (1) Time for Filing a Notice of Appeal.
>
> (A) In a civil case, except as provided in Rules 4(a)(l)(B), 4(a)(4),and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

Fed. R. App. P. 4(a)(l)(A).

D. The Fourth Circuit's February 26, 2024 Remand

On February 26, 2024, the United States Court of Appeals for the Fourth Circuit issued an opinion in response to Mr. Morse's Notice of Appeal. (ECF No. 76.) In the opinion, the Fourth Circuit correctly identified that "[i]n civil cases, parties have 30 days after the entry of the district court's final judgment or order to note an appeal" pursuant to Federal Rule of Appellate Procedure 4(a)(l)(A). (ECF No. 76, at 3.) The Fourth Circuit further explained, however, that the district court can "extend[] the appeal period under Fed. R. App. P. 4(a)(5)[3] or reopen[] the appeal under Fed. R. App. P. 4(a)(6).[4]" (ECF No. 76, at 3.) Noting

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[3] Federal Rule of Appellate Procedure 4(a)(5) provides in pertinent part:

> (5) Motion for Extension of Time.
>
> (A) The district court may extend the time to file a notice of appeal if:
>
> (i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and
>
> (ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

Fed. R. App. P. 4(a)(5).

[4] Federal Rule of Appellate Procedure 4(a)(6) provides:

> (6) Reopening the Time to File an Appeal. The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

that Mr. Morse filed his Notice of Appeal "within the 30-day excusable neglect period", the Fourth Circuit construed Mr. Morse's Notice of Appeal "and informal reply brief . . . as a request for an extension of time to appeal."[5] (ECF No. 76, at 3.) The Fourth Circuit "remand[ed] the case to [this Court] for a determination of whether Mr. Morse can establish excusable neglect or good cause warranting an extension of the 30-day appeal period." (ECF No. 76, at 3.) The Fourth Circuit explained that "[t]he record, as supplemented, will then be returned to [the Fourth Circuit] for further consideration." (ECF No. 76, at 3.)

> (A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;
>
> (B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and
>
> (C) the court finds that no party would be prejudiced.

Fed. R. App. P. 4(a)(6).

[5] In his Notice of Appeal, Mr. Morse wrote: "This is Plaintiffs notification of appeal to the [Clerk] . . . on Document No. 67 that Plaintiff has 60 days to file an appeal in this case dated August 11, 2023." (ECF No. 70, at 1.) As mentioned above, on August 11, 2023, this Court issued a Memorandum Opinion dismissing Mr. Morse's Second Amended Complaint with prejudice. (ECF No. 67, at 3.) In its August 11, 2023 Final Order, the Court incorrectly advised Mr. Morse that if he wished to appeal, he must file "a written notice of appeal . . . with the Clerk of the Court within sixty (60) [(not 30)] days of the date of entry hereof." (ECF No. 68, at 1.)

II. Analysis

For the purposes of the single issue on remand-whether Mr. Morse can establish excusable neglect or good cause warranting an extension of the 30-day appeal period-despite the lengthy procedural history just summarized, only a few dates and federal rules pertain.

Federal Rule of Appellate Procedure 4(a)(5)(A) provides that "[t]he district court may extend the time to file a notice of appeal if: (i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and (ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause." Fed. R. App. P. 4(a)(5)(A).

Here, the time prescribed by Rule 4(a) expired on September 10, 2023. On October 2, 2023, Mr. Morse filed his Notice of Appeal, which contains language that the Fourth Circuit has liberally construed as a request for an extension of time. (*See* ECF No. 76, at 3.) Under that aegis, October 2, 2023 was not "later than 30 days after [September 10, 2023]". *See* Fed. R. App. 4(a)(5)(i). Therefore, Mr. Morse's request for an extension of time is timely because he filed the request within the 60-day time period after August 11, 2023. The question then becomes whether Mr. Morse has satisfied the standard of "excusable neglect or good cause". *See* Fed. R. App. P. 5(A)(ii).

The Fourth Circuit has explained that "[w]hile the language of Rule 4(a)(5) could reasonably be interpreted to allow an extension of time upon a showing of either 'good cause' or 'excusable neglect'

throughout the entire sixty-day time period," it is clear from the advisory committee notes "that the 'good cause' standard . . . is only applicable to motions for extension of time filed within the initial thirty-day period following the entry of judgment." *Thompson v. E.L DuPont de Nemours & Co.*, 76 F.3d 530,532 (4th Cir. 1996). As a result, the Court will now turn to the question of whether Mr. Morse can satisfy the "excusable neglect" standard.

As to excusable neglect, in *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd P'ship*, 507 U.S. 380 (1993),[6] the United States Supreme Court considered the meaning of "excusable neglect," concluding that "the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." *Id* at 395. Excusable neglect is a "somewhat elastic concept." *Id* at 392 (internal quotation marks omitted). Relevant factors include the danger of prejudice to the other party, the length and reason for the delay-including whether it was within the party's control-and whether the party acted in good faith. *Id* at 395.

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[6] Although *Pioneer* examined the meaning of "excusable neglect" when analyzing bankruptcy rules, the Fourth Circuit has joined other circuits in holding that this analysis also applies to civil appeals under Fed. R. App. P. 4(a). *See Thompson v. E.I DuPont de Nemours & Co.,* 76 F.3d 530, 533 (4th Cir. 1996) (observing that "it is evident that the [Supreme] Court intended its definition of "excusable neglect" [in *Pioneer]* to be equally applicable to Federal Rule of Appellate Procedure 4(a)(5), as every appellate court to consider the applicability of *Pioneer* to Rule 4(a)(5) and Rule 4(b) (criminal appeals) has concluded") (collecting cases).

Here, applying the factors in Pioneer, the Court concludes that Mr. Morse has shown more than "excusable neglect" under these circumstances.

First, nothing suggests that Mr. Morse, who adhered to the Court's inaccurate 60-day appeal deadline, would not have timely filed his appeal by September 10, 2023 had this Court not mistakenly told him that the deadline was October 10, 2023. "Although inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute 'excusable' neglect" on a litigant's part, Pioneer, 507 U.S. at 392, "it is not, in this Court's view, neglect to rely upon a Court's orders and representations and, if it is neglect, it most certainly is excusable." *Hobbs v. Cnty. of Summit*, No. 5:10CV2069, 2014 WL 3735149, at *4 (N.D. Ohio July 28, 2014) (finding excusable neglect where plaintiff missed deadline to appeal by one day after district court mistakenly informed plaintiff that the deadline to appeal was October 26, 2012, when in fact it was October 25, 2012).

Second, the Court believes minimal, if any, prejudice would inure to either party if an extension is granted even at this date. Nor would there be any significant impact on the judicial proceedings in general, other than rendering an already long-pending case even longer. Because this Court has never found that any of Mr. Morse's Complaints satisfied Federal Rule of Civil Procedure 8, his claims have never proceeded to the merits. Mr. Morse's appeal relates to whether this Court properly concluded that the Second Amended Complaint failed to satisfy Rule 8, and whether this Court properly dismissed the Second Amended Complaint with prejudice. Mr. Morse should be permitted to test the propriety of this ruling and, of

course, should not be barred from doing so due to an inaccurate deadline provided, unintentionally, by this Court. To rule otherwise would improperly value form over substance and would ignore this Court's discretion, permitted by the federal rules, to extend deadlines in extenuating circumstances such as this one. Such a ruling has the benefit of being fundamentally fair in addition to following legal precedent.

III. Conclusion

For the foregoing reasons, the Court concludes that Mr. Morse has established excusable neglect warranting an extension of the 30-day appeal period, rendering his October 2, 2023 Notice of Appeal, (ECF No. 70), timely.

An appropriate Order shall issue.

/s/ M. Hannah Lauck
U.S. District Judge

Date 4/30/24
Richmond, Virginia

OPINION DENYING APPEAL, U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT (OCTOBER 22, 2024)

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ROGER LEE MORSE,

Plaintiff-Appellant,

v.

VIRGINIA DEPARTMENT OF CORRECTIONS; CHADWICK DOTSON, in his individual and official capacity as Director for the Virginia Department of Corrections; PATRICIA S. BISHOP, in her individual and official capacity as Director for the Virginia Retirement System; JOSEPH WALTERS, in his individual and official capacity as Deputy Director of Administration for Virginia Department of Corrections; BETH CABELL, in her individual and official capacity as Warden; TONY DARDEN, in his Individual and official capacity as Assistant Warden; KEVIN CLARK, in his individual and official capacity as Major, Correctional Officer; CHRISTOPHER M. GRAB; WILLIAM MUSE, in his individual and official capacity as Hearing Officer for the Office of Employment Dispute Resolution; CARL W. SCHMIDT, in his individual and official capacity as Hearing Officer for the Office of Employment Dispute Resolution; ROBIN H. LOW, in her individual and official capacity as

Supervisor of Purchase of Prior Service
for the Virginia Retirement System,

Defendants-Appellees.

No. 23-2039

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. M. Hannah Lauck, District Judge. (3:21-cv-00168-MHL)

Submitted: October 10, 2024
Decided: October 22, 2024, 2024

Affirmed by unpublished per curiam opinion.

Before: NIEMEYER and HEYTENS, Circuit Judges, and KEENAN, Senior Circuit Judge.

Roger Lee Morse, Appellant Pro Se. Ronald Nicholas Regnery, Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Roger Lee Morse appeals the district court's order dismissing, pursuant to Fed. R. Civ. P. 41 (b), Morse's second amended civil complaint. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's order. *Morse v. VDOC*, No. 3:21-cv-00168-MHL (E.D. Va. Aug. 11, 2023). 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

ORDER REJECTING MR. MORSE'S THIRD AMENDED COMPLAINT, U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA (DECEMBER 11, 2024)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ROGER LEE MORSE,

Plaintiff,

v.

VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL.,

Defendant.

Civil Action No. 3:21-cv-0168

Before: M. Hannah LAUCK, U.S. District Judge.

ORDER

This matter comes before the Court on Plaintiff Roger Lee Morse's Motion for Leave to File Third Amended Complaint (the "Motion"). (ECF No. 88.) On August 11, 2023, this Court dismissed Plaintiff Roger Lee Morse's Second Amended Complaint with prejudice. (ECF Nos. 67, 68.) On October 2, 2023, in response to this ruling, Mr. Morse filed a Notice of Appeal with

the United States Court of Appeals for the Fourth Circuit. (ECF No. 70.) Over three months later, on January 14, 2024, Mr. Morse filed a Motion for Relief from Dismissal with Prejudice Under FRCP 60(b)(l) and 60(b)(6) (the "Motion to Reopen"). (ECF No. 73.)

On February 26, 2024, the United States Court of Appeals for the Fourth Circuit issued an opinion in response to Mr. Morse's Notice of Appeal. (ECF No. 76.) Noting that Mr. Morse filed his Notice of Appeal "within the 30-day excusable neglect period", the Fourth Circuit construed Mr. Morse's Notice of Appeal "and informal reply brief . . . as a request for an extension of time to appeal."[1] (ECF No. 76, at 3.) The Fourth Circuit "remand[ed] the case to [this Court] for a determination of whether [Mr.] Morse can establish excusable neglect or good cause warranting an extension of the 30-day appeal period." (ECF No. 76, at 3.) The Fourth Circuit noted that "[tlhe record, as supplemented, will then be returned to [the Fourth Circuit) for further consideration." (ECF No. 76, at 3 (emphasis added).)

On April 30, 2024, this Court signed an Order "find[ing] that Mr. Morse has established excusable

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[1] In his Notice of Appeal, Mr. Morse wrote: "This is Plaintiffs notification of appeal to the [Clerk] . . . on Document No. 67 that Plaintiff has 60 days to file an appeal in this case dated August 11, 2023." (ECF No. 70, at 1.) As mentioned above, on August 11, 2023, this Court issued a Memorandum Opinion dismissing Mr. Morse's Second Amended Complaint with prejudice. (ECF No. 67, at 3.) In its August 11, 2023 Final Order, the Court incorrectly advised Mr. Morse that if he wished to appeal, he must file "a written notice of appeal . . . with the Clerk of the Court within sixty (60) [(not 30)] days of the date of entry hereof." (ECF No. 68, at 1.)

neglect warranting an extension of the 30-day appeal period", (the "April 30 Order"). (ECF No. 80, at I.) As a result, the court: (1) "DEEMED TIMELY" his October 2, 2023 Notice of Appeal, (ECF No. 70); and (2) "DENIED AS MOOT" his Motion to Reopen, (ECF No. 73). (ECF No. 80, at 1.)

On October 22, 2024, the Fourth Circuit issued a judgment in response to Mr. Morse's Appeal of this Court's dismissal of this case with prejudice, (ECF No. 70, at 1), stating: "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 [Federal Rule of Appellate Procedure] 41."[2] (ECF No. 85, at 2 (emphasis added).) On November 13, 2024, the Fourth Circuit issued a mandate, rendering the Court's October 22, 2024 judgment effective on that date. (ECF No. 87, at 2; *see* Fed. R. App. 41.)

To summarize, this Court dismissed this action with prejudice, (ECF No. 67, at 3), Mr. Morse appealed that decision, (ECF No. 70, at 1), and the Fourth

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[2] Fed. R. App. 41 states, in relevant part:

> (a) CONTENTS. Unless the court directs that a formal mandate issue, the mandate consists of a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs.
>
> (b) WHEN ISSUED. The court's mandate must issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time by order.

Fed. R. App. 41(a)-(b).

Circuit affirmed this Court's dismissal, (ECF No. 85). As a result, the Court DENIES the Motion. (ECF No. 88.) Mr. Morse and his counsel are ADVISED that further filings in this case are procedurally improper.

It is SO ORDERED.

/s/ M. Hannah Lauck
U.S. District Judge

Date 12/11/2024
Richmond, Virginia

ORDER DENYING PETITION REHEARING, U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT (DECEMBER 2, 2025)

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

IN RE: ROGER LEE MORSE,

Petitioner.

No. 25-1252

(3:21-cv-00168-MHL)

Before: NIEMEYER and HEYTENS, Circuit Judges, and KEENAN, Senior Circuit Judge.

ORDER

The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Niemeyer, Judge Heytens, and Senior Judge Keenan.

For the Court

/s/ Nwamaka Anowi
Clerk

MR. MORSE'S NOTICE OF APPEAL (OCTOBER 2, 2023)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ROGER LEE MORSE,

Plaintiff,

v.

VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL.,

Defendant.

Civil Action No. 3:21-cv-0168

Filed: Oct - 2 2023,
Clerk, U.S. District Court, Richmond, Va.

MOTION FOR NOTIFICATION FOR APPEAL

This is Plaintiff's notification of appeal to the Clerk, Mr. Nwamaka Anowi of the 4th Cir. Ct. of Appeal on Document No. 67 that Plaintiff has 60 days to file an appeal in this case dated August 11, 2023.

Respectfully Submitted,

Roger L. Morse
5106 Heritage Rd.
N. Prince George,
Virginia, 23860
Email: rogmor50@gmail.com

MR. MORSE'S INFORMAL BRIEF
(NOVEMBER 27, 2023)

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ROGER MORSE,

Plaintiffs-Appellant,

v.

VIRGINIA DEPARTMENT OF
CORRECTIONS, ET AL.,

Defendants-Appellees.

No. 23-2039

3:21-cv-00168-REP
3:-01-cv-337

Received: 2023 Nov 27 P. 3:43
U.S. Court of Appeals, Fourth Circuit

APPELLANT INFORMAL REPLY BRIEF

I. Appellant Response to Appellee's Introduction:

Appellant, Roger Lee Morse Pro se will reply to the Appellee's Informal Response Brief filed in 4TH Cir. Ct. of Appeal on November 13, 2023, that Appellant received by UPS mail on November 14, 2023. Where it appears that the Appellees to this day have never responded to any of Appellant's USERRA violations or

any of Appellants other federal and state violations and complaints. That's connected under USERRA federal statute 38 U.S.C. §§ 430 I thru 4335 or state statute Va. Code § 44-93 and 44-93.5, or statute 38 U.S.C. §§ 430 I thru 4335 or state statute Va. Code § 44-93 and 44-93.5, or Title VII and filed in 4th Cir. Ct. of Appeal in Cases No 23-2039 and Case No. 14-1399. Also filed in federal district cou1i in cases No. 3:21-cv-00168 and 3: 13-cv-00361 under USERRA violation connected to Morse's district court case 3:0 l-cv-00337 under the nexus and proximity to other state and federal violations under USERRA violation and continues to affect Appellant's future. That's out of the same set of facts and events filed in Federal District Court and the Appellee continued to deflect away from responding to any of Appellant's USERRA violations complaints connected to other federal and state violations filed even in this informal response brief.

It appears that opposing counsel is bringing their law degrees to the table and that is it. Since Appellant survived their rule 12 defense there only option was to attack the Appellant's Pro se statute, "your Honor Pro se did not follow Rule 8 or 10 and his USERRA case that connected to other federal and state violation and should be dismissed with prejudice and made to paid legal fee and court cost for being a veteran and enforcing USERRA laws in both a state Circuit and a federal court under 38 U.S.C. § 4323 et seq and Va. Code § 44-9)A) and 44-93.5".

Appellant under USERRA statute met all the court requirements prior to the district court removing the veteran 's paid legal counsel and directing the veteran to represent himself and afterward because the court does not like the outcome in order to help the

opposing party out. Directed the Pro se veteran to file a Second Amended complaint to help the opposing counsel out again by removing evidence and exhibit already presented in Appellant favor and start all over.

Where Appellant is fully aware that this Second Amended complaint is a trap to help the opposing counsel out and if Appellant does not file a Second Amended complaint the district court will dismiss Appellant's USERRA claims and other state and federal claims as failure to comply with Court Order. If Appellant does file a Second Amended complaint the district court will dismiss with prejudice as well under failure to follow strict court instruction.

But the Appellee does not have to respond to Appellant Second Amended complaint because the court is going to dismiss Appellant's Second Amended complaint as soon as Appellant files as failure to follow district court strict instruction. Appellant is fully aware that the court cannot make a ruling to amend where only one party complies and the other does not. Appellant is fully aware that a Second Amended complaint the case starts over and the opposing counsel must respond to the new Amended complaint as well or lose the case under FRCP 15.1[1] Opposing counsel

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[1] Rule 15. Amended and Supplemental Pleadings

(3) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(4) Time to Respond. Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the

never responded that counsel could not interpret Appellant Second Amended complaint as a new complaint and lost the case for failure to respond.

II. Appellant Response to Appellee's Statement on Jurisdiction:

Appellee stated that in its final order, the district court stated that "[s]hould Morse desire to appeal, a written notice of appeal must be filed with the Clerk of the Court within sixty (60) days of the date of entry hereof." Case 3:21cv168, Doe No. 67, Aug. 11, 2023, at footnote I. Morse noted his appeal on October 2, 2023. This Court has appellate jurisdiction to review the judgment of the district comt under 28 U.S.C. § 129 1.1 *See* Appellee's footnote 1 nextline from opposing counsel.

1 Per 28 U.S.C. § 2107(a), "[u)nless as otherwise provided in this section, no appeal shall bring any judgment, order or decrease in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is file within (30) days after the entry of such judgment, order or degree." Neither 28 U.S.C. § 2107(a) nor the final order provides a basis for Morse to be given (60) days to note his appeal herein. As a result, this appeal is untimely and thus the Appeallees move for dismissal of such, with prejudice, on that ground.

Appellant's Response No. 1: First, the opposing counsel is grasping for straws by trying to state that district court erred when it stated that the Appellant has (60) days to file an appeal under federal statute 28 U.S.C. § 1291 and not 30 days to file. That federal

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original pleading or within 14 days after service of the amended pleading, whichever is later.

statute 28 U.S.C. § 2107(a) only allows for an appeal for 30 days only. We will now review 28 U.S.C. § 2 107(b)(4) is 60 days if the U.S. is a party, U.S. Congress and the veteran filing this complaint is U.S. Army Reserve Non-commissioned Officer, Sergeant Major Roger Morse.[2] Appellant's complaint is an USERRA complaint mandated by the U.S. Congress, U.S. Supreme Court, and the Virginia General Assembly. Therefore the 4th Cir. Ct. of Appeal cannot dismiss Appellant USERRA complaint as an untimely file appeal. Second, Appellant under USERRA statute 38 U.S.C. § 4327(b) there shall be no time limit in filing a deadline in a USERRA violation.[3] There is no Jurisdiction error as stated by opposing counsel.

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[2] 28 U.S.C. § 2107(b)(1)(2)(3)(4)-Time for appeal to court of appeals:

> (b)ln any such action, suit, or proceeding, the time as to all parties shall be 60 days from such entry if one of the parties is–
>
> (1) the United States;
>
> (2) a United States agency;
>
> (3) a United States officer or employee sued in an official capacity; or
>
> (4) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on behalf of the United States, including all instances in which the United States represents that officer or employee when the judgment, order, or decree is entered or files the appeal for that officer or employee.

[3] **(b) Inapplicability of Statutes of Limitations**—If any person seeks to file a complaint or claim with the Secretary, the Merit Systems Protection Board, or a Federal or State court

III. Appellant Response to Appellee's Factual Background:

Appellant's Response No. 1: First, as stated by Appellee, Morse/Appellant worked for the Virginia Department of Corrections ("VDOC" or "Department"). Appellant was rehired in December 25, 1997, with a 10% increase at the end of probation period in the amount of $28,443. Mid-July 2002, Defendant Broughton, a Defendant in Morse l and 2 complaint informed Appellant that Appellant was being reinstated with back pay and benefits as if Appellant never left. Once Appellant reported fraud to the district court on May 10, 2002, in Morse 1 complaint that involved public interest under safety, health, and welfare. Where on January 21, 1998, Appellant was unlawfully terminated for past work history.

December 16, 2002, once reporting fraud violation to the district court and the Va. Attorney General Office on January 21, 1998,. That Chief Warden at Greensville

Correctional Center is not a state employee and was unlawfully and illegally terminating state employees such a Appellant that has 11th and 14th Amend protection and illegally participating in the lawful executions of Virginia Death Row inmates. Making the execution unlawful as well under cruel and unusual punishment against the Death Row Inmates 8th and 14th Amend. Protection. December 16, 2002, DOC Headquarter HR Section informed Appellant that Appellant's reinstated sala1y as a Senior Correctional Officer salary once reinstated will be in the amount of $35,720 plus a 10% increase in the amount of $3572

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under this chapter alleging a violation of this chapter, there shall be no limit on the period for filing the complaint or claim.

for transferring to a higher security facility total $39,292 plus future upcoming cost of living increase once Appellant return. Unknown to Appellant on December 16, 2002, while Appellant was on military active duty, (Annual Training (AT) and additional duty to get the Army Reserve Unit ready for mobilization to Iraq) and waiting to be reinstated. March 3, 2003, Appellant was reinstated back to state employment as a Senior Correctional Officer with over 15 years of law enforcement experience.

IV. Appellant Response to Appellee's Procedural History

A. Morse I

All facts from May 23, 2001, to March 20, 2002, are stated in section III in Appellant Response to Appellee's Factual Background up to March 3, 2003, reinstatement date. Appellant will now review Procedural History as Appellee stated. First, on May 23, 2001, Appellant filed *More v. Virginia Department of Corrections et al.*, No. 3:0 l-cv-00337 ("Morse I"). In addition to the VDOC, Morse named five individual defendants in that matter But there is only one Defendant in Morse complaint that is connected to all three cases. That person is Defendant Paul Broughton under the nexus and proximity in Morse's complaint 1, 2, and in this complaint.

Appellant is stating that on page 2: In Appellee's Morse l statement most facts are close enough except January 29, 1998, the Department fired Morse when one of his supervisor's accused him of calling another supervisor a "Bitch." The exact facts are that on January 20, 1998, Morse was unlawfully terminated for

past work history for filing grievances in the past by the Assistance warden.

Morse filed a verbal complaint with the DOC Headquarter and the Chief Warden was informed that the Regional Director did not approve any termination of Morse and to set up a meeting and reinstate Morse. January 21, 1998. Chief Warden during the meeting refused to reinstate Morse and falsely stated that while in a meeting he wanted to talk about yesterday's events calling the Assistance Warden a "Bitch" while Morse was being escorted off of state property someone overheard Morse call the Assistance Warden a "Bitch." Morse stated that calling the Warden a "Bitch" was not true, and Hearsay. Chief Warden became irate and stated ("I don't give a Goddamn," started cursing and stated that he was not going to reinstate Morse. Morse departed state property and informed HR. Director Broughton of Chief warden action and his refusal to reinstate Morses. Defendant Broughton states there is nothing he could do, that it is out of his hands and left Morse in limbo. May 23, 2001, Appellant filed *Morse v. Virginia Department of Corrections et al.*, C.A. No. 3:01-cv-0033 7 ("Morse I").

January 28, 2002, the district court affirmed in part and dismissed in part. Morse's claim under Discrimination, Defamation, and Retaliation was affirmed. Morse's claims under Unlawful Termination, Hostile Work Environment and Va. Human Rights Act dismissed under the January 21, 1998, date and not the July 12, 1999, date were dismissed as untimely file. Where Defendant Broughton Approval date of Morse Unlawful Termination was July 12, 2001, as stated in Morse l complaint. The matter was then scheduled for trial on February 1, 2002. Morse was

informed that the February 1, 2002, was a hearing date only and not a trial. Morse informed the district court, however, that he had retained counsel but counsel has failed to show up or take any action. At this point Morse filed a Motion to Dismiss Without Prejudice on all claims in order to save claims for the future. That evening when Morse arrived home from district court in Morse's mailbox was a letter from Richmond District court dated January 28, 2002. Letter stated that Morse has three affirmed claims and three claim dismissed.

It appears that the district court and the opposing counsel was very much aware that Morse has three affirmed claims when Morse filed Motion to Dismiss Without Prejudice in federal court on February 1, 2002, and did not inform Morse of the ruling. Mid-February 2002, opposing counsel objected to Morse's Motion to Dismissal with Prejudice on all of Appellant claims and stated that federal court has already rule in this case and to give Pro se Motion to Dismissed Without Prejudice would be bias and prejudice against the opposing party an another bite. The District Court on January 28, 2002, dismissed Morse claim under Unlawful Termination, Hostile Work Environment and the Va. Human Rights Act. Opposing counsel stated that the court should dismiss Morse's claims under Unlawful Termination, Hostile Work Environment and the Va. Human Rights Act under Dismissed with Prejudice. On Morse remaining claims opposing counsel have no problem if the district court was to Dismiss Appellant remaining claims without Prejudice that were already affirmed and no one informed Appellant of January 28, 2002, ruling on affirmed claims until February 1, 2002 by mail.

March 20, 2002, district court used rule 41 as a tool to dismiss Plaintiffs affirmed claim in order to help the opposing party out under ("tools of the trade where there is multiple way to dismiss a case"). The District Court stated that Appellant's Motion to Dismiss Without Prejudice on all claims were denied by opposing counsel and Morse claims under Unlawful Termination, Hostile Work Environment, and the Va. Human Rights Act will be dismissed with prejudice under the January 28, 2002, Ruling date.

The District Court stated that Appellant's remaining claims will be dismissed without prejudice and for the court to keep control over Appellant's remaining claims. Appellant must have legal representation when Appellant does refile and the court will not mention in this ruling that Appellant claims was affirmed on January 28, 2002, in Appellant's favor in order to help the opposing party out.[4] March 20, 2002, Court Order stated that Appellant's claims were dismissed under the January 28, 2002, date will be dismissed with prejudice. Plaintiff's remaining claims will be dismissed without prejudice and if Appellant wishes to refile at a later date Appellant must have

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[4] Appellant on February 1, 2002, filed Motion to dismiss without prejudice on all of Appellant claims and the opposing counsel rejected the Motion to Dismiss Without Prejudice. Exactly what law did allowed the district court to approve a Motion to dismiss without prejudice in part when the Appellant requested for all claims be dismissed without prejudice and was denied by district court? Plus, what good reason would an Appellant dismiss an affirmed claim in order to get a legal counsel to refile the very same claim that is already affirmed in Appellant favor.

legal counsel to represent Plaintiff once Plaintiff refiles claims in the future.

March 28, 2002, Appellant filed a timely Motion to Rescind Motion to Dismissed Without Prejudice on affirmed claims. April 12, 2002, Appellant's Motion to Rescind Motion to Dismissed Without Prejudice by district court was denied. May 10, 2002, Appellant filed a Motion of Fraud and Motion for Reconsideration on Chief Warden at Greensville Correctional Center on not being a state employee under Fraud upon the Court under 11th and 14th Amendment under Rule 60(b)(3).

June 28, 2002, federal court is barred from running a state entity and in an attempt to help the state out again did not allow the state to respond to fraud upon the court complaint. Instead, the federal court responded to Plaintiff's fraud complaint and stated the Appellant failed to prove that Garraghty illegally reinstatement by an outside source that Garraghty committed from upon the court.

The opposing counsel never responded to the fraud complaint to determine if the Chief Warden is a state employee or not and the district court dismissed the case and stated that the Appellant is stating that when Chief Warden Garraghty was lawfully terminated and illegally reinstated by an outside source in 1992. Appellant failed to prove Garraghty illegally re-hiring that Garraghty committed fraud upon the Court. Federal Court stated that Appellant fraud complaint is frivolous and without merit and will be dismissed. This was to be expected.

Early July 2002, Appellant contacted the opposing counsel Guy Horsley and informed counsel that Plaintiff

was very much aware that the federal court was helping them out since the opposing counsel never responded to the Fraud Motion and Motion for Summary Judgment complaint and still won the case. Counsel Horsley stated that he will have someone from the Va. DOC contact Plaintiff.

Mid-July 2002, Defendant Broughton in Morse I Complaint stated that he was directed by the Director of the Va. DOC Ron Angelone and opposing counsel Guy Horsley to inform Appellant that Appellant is being reinstated with back pay and benefits as if Appellant never left.

December 16, 2002, while Appellant was on military active duty under USERRA violation under 38 U.S.C.§ 4311 (Annual Training (AT) and additional duty to get the Army Reserve Unit ready for mobilization to Iraq). Defendant Broughton from Morse 1 complaint contacted Defendant from Hite from Morse 2 complaint from Sussex II State Prison under abuse of power and USERRA violation under 38 U.S.C. § 4301 et seq. Defendant Broughton directed Defendant Hite to make Appellant a rehire with an entry Correctional Officer salary in the amount of $23,380 plus a 10 % increase at the end of Probationary period in the amount of $2338 total $25, 718 and change it to $25, 720 to give the appearance that he approved Officer Morse hiring salary. Appellant 2002, reinstated salary was $35,720, plus 10% increase in the amount of $3572, plus cost of living total $39,292. *See* prima facie exhibits 5 and A-1 in complaint dated March 3, 2003. Appellant citing the case of *Staub v. Proctor Hosp*. (Mar. 1, 2011. No. 09-400)

562 U.S.[5] Appellant response to Appellee's footnote 2 Appellant where on May l 0, 2002, Appellant did file a Motion for Reconsider under Fraud and Motion for Summary Judgement that involved Public interest under Safety, Health, and Welfare only.

B. Morse II

Appellee's is stating in this Morse II complaint that on June 3, 2013, Appellant filed *Morse v. Virginia Department Of Corrections et al*., C.A. 3:13-cv-00361 ("Morse II").

Appellant is stating that on page 4: In this lawsuit, Appellant named twenty-one individual defendants in addition to VDOC. First, five of the Defendants were from Morse I complaint that have never been resolved. The second set of 16 Defendants in Morse II complaints are considered state employers under USERRA violation 38 U.S.C. § 4304 that are connected and out of the same set of facts and events. Where all facts stated by the Appellee counsel did happen and the defendants are directly involved. Appellee stated that Appellant filed a 140 page complaint (with 189 pages of exhibits). Appellant looking back this was considered overkill and in Appellant defended. Appellant has extreme PTSD and simply

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[5] The U.S. Supreme Court has clarified the standards under which an employer can be liable for discrimination under the so-called "cat's paw" theory of liability in a discrimination claim. *See Staub v. Proctor Hospital*, No. 09-400 (March 1, 2011). The Court held that if a supervisor per forms an act motivated by unlawful animus and intends to cause an adverse employment action, the employer is liable if the supervisor's act is a proximate cause of the adverse decision even if the decision maker did not share the supervisor's animus

did the best that he could with this disability. Appellee stated that Appellant stated that the Veteran complaint contained a laundry list of eighteen federal and state laws violations.

March 3, 2003, Plaintiff was reinstated. Where in this complaint Defendant Broughton in Morse l and 2 complaint is the common denominator and the nexus and proximity of Appellant's USERRA violation complaint going forward.

March 3, 2003, Appellant under USERRA violation § 4311 was reinstated with no state application or document showing otherwise, Appellant presented a (189 exhibits) that supported that Appellant was reinstated with a salary in the amount of $35,720 for March 3, 2003 and a departure salary on September 10, 2003 in the amount of $35, 720 as well under USERRA Protection. Document under USERRA violation also shows that on March 10, 2004, Appellant the veteran salary is in the amount of $25,720 plus a cost of living increase total $26,299 which is less than Appellant 1997/98 rehiring salary in the amount of $28,443. As Appellant stated under USERRA violation Appellant's reinstated salary is $35,720 and Appellant rehire salary in December 1997/98 is $28,443 and on March l 0, 2004, Appellant's salary is reduced as a veteran returning from war in the amount of $ 25,720 plus cost of living increase total $26,299. And made are hire instead of reinstated. *See* in Morse II complaint exhibit A-1.

This salary of $26,299 is less than Appellant 1997 /98 rehiring salary and if the state employer is giving Appellant a cost of living and bonus under the $25, 720 salary. Then the veteran Appellant has not received bonuses, raises, and other paid benefits to

which the veteran is entitled under USERRA protection under 38 U.S.C. § 4311.

March 10, 2004, to August 2010, under USERRA violation where each time the Appellant the veteran returned from military active duty the Appellant was made a rehire under discrimination and improper re-instatement under USERRA violation statute 38 U.S.C. § 4311. *See* in Morse If complaint exhibit 1, A-1.

Where the veteran employee returning from military active duty under vested property rights, frontpays, back pay, reinstatement pay, under the escalator principle, seniority, and experience have been unsuccessful in getting proper salary corrected under the escalator principle, or promotion for retirement under USERRA violation from December 16, 2002, going forward to present and waiting to be properly reinstated with all pay and benefits under the escalator principle. *See* in Morse II complaint exhibit A-1 and exhibit 5 paragraph 1 and 2.

Appellant has been denied promotion to Lieutenant from August 2011 to present under USERRA violation 38 U.S.C. § 4311 returning from war. While on military active duty was denied promotion to Sergeant until January 2016. Appellant was not selected to Sergeant until after filing numerous complaints under USERRA violations. Where other employees were given training once selected to Lieutenant and Appellant was denied for the position. Appellant was not selected to Lieutenant within three years of returning from military active duty under USERRA violation in August 2010 to present. Appellant was denied training once returning from war in Iraq for promotion sergeant to Lieutenant under USERRA violation from August 2011 to 2019. Where

other applicants that were selected were allowed to receive training once selected to Lieutenant position. Appellant filed USERRA violation under a discrimination, defamation, retaliation repeatedly.

Appellant grievance on reinstated pay and benefits as stated by Defendant in Morse 2 complaint EDR Director Claudia T. Farr dated January 19, 2012. Where Appellant filed USERRA grievances on December 16, 2011, Appellant filed two employee Grievances under 38 U.S.C. § 4 311 under state and federal USERRA violation Va. Code § 44-93 et seq and § 44-93.5. Where the state employer refuses to sit down with the veteran employee returning from war and go over the employee salary and benefits. Where the fact in this grievance Ruling No. 2012-3219 that on December 16, 2011, grievance. The grievance seeks [b]ack pay and benefits for the long periods of unemployment since January 20, 1997." The grievance's argument arises from the handling of his employment by the agency in the late-1990. Upon returning to the agency in 2003, the grievance states he was told he would receive back pay and benefits as if he never left the agency. This alleged promise was not fulfilled. However, the grievant, a member of the U.S. Army Reserve, was called to active duty in August 2003, returning to the agency in February 2004. He was remobilized again in April 2004 until March 2009, and again from April 2009 to August 2010, whereupon he returned to work.

Defendant Farr stated that Appellant the grievant must initiate a written grievance within 30 calendar days of the date he or she knew or should have known of the event or action that is the basis of the grievance. Defendant Farr in a compliance ruling related to his

December 16, 2011, grievance with the Department of Corrections (the Agency). The agency asserts that the grievant failed to initiate his grievance in a timely manner. For the reason set forth below, this grievance was not initiated timely and is administratively closed. Defendant Farr in Morse 2 complaint confirms that Appellant reinstated salary and benefits have been denied under USERRA violation by the state employer once returning from military active duty in the grievance. Where Appellant have been getting raises based on a lesser salary under USERRA violation under 38 U.S.C. § 4311. Where a veteran failed to file grievance within thirty days (30) of the grievance violated by the state employer. A veteran employee enforcing a state and federal USERRA violation where U.S. Congress have clearly stated that there will be no time limit for filing to enforce a USERRA violation against the state employer under 38 U.S.C.§ 4327(b). A state employee grievance cannot override a USERRA violation under 38 U.S.C. § 4302(b) and Va. Code § 44-93.5.6[6] *See* Prima facie Exhibit C-2 in Morse Amended complaint.

Appellant denied property rights under Federal USERRA law and Va. Commonwealth of Virginia USERRA law violation denied legal counsel representation in a USERRA complaint. Where Appellant paid for legal counsel and the federal court removed Appellant legal counsel and directed that Appellant

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6 (b)This chapter supersedes any State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter, including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit.

the Pro se can represent himself. Appellant requested under the Virginia General Assembly law that the veteran employer who's USERRA rights have been violated by the state employee can request to the Virgina Attorney General Officer in Petition for appointment of legal counsel under USERRA rights under federal and state statute 38 U.S.C. § 4323(h)(2) and Va. Code 44-93.5.

Appellant is responding to footnote 3 where Appellee counsel is stating that the 4th Cir. Ct. of Appeal will not be taken any papers from Appellant based on Rule 40(d) notice issues in the appeal case of *Morse v. Virginia* DOC C.A. 14-1399. Appellant citing the case where the U.S. Supreme Court cited the case of *Torres v. Texas Department of Public Safety*, 597 U.S. dated on June 29, 2022.[7] That states that a veteran

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[7] LE ROY TORRES, PETITIONER *v.* TEXAS DEPARTMENT OF PUBLIC SAFETY

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF TEXAS, THIRTEENTH DISTRICT

[June 29, 2022]

JUSTICE BREYER delivered the opinion of the Court.

The Constitution vests in Congress the power "[t]o raise and support Armies" and "[t]o provide and maintain a Navy." Art. I, § 8, els. I, 12-13. Pursuant to that authority, Congress enacted a federal law that gives returning veterans the right to reclaim their prior jobs with state employers and authorizes suit if those employers refuse to accommodate them. *See* Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. § 4301 *et seq*. This case asks whether States may invoke sovereign immunity as a legal defense to block such suits.

In our view, they cannot. Upon entering the Union, the States implicitly agreed that their sovereignty would yield to federal policy to build and keep a national military. States thus gave up

employer is a state. The veteran employee can sue a state employer in federal court. Where at that time the appeal court ruled a state employee was not allowed to file a USERRA complaint directly in federal court. The State employee has to file in a state Circuit Court under USERRA statute 38 U.S.C.§ 4323(b)(2). Now a state employee is no longer barred from filing a USERRA complaint in federal district court. Therefore any USERRA claims that was previously in federal district court and now be refile back in federal district court under 38 U.S.C. § 4327(b)

C. Morse III

Appellee is stating that on page 6: That on October 20, 2019, Appellant filed a Notice of Appeal in a state Circuit Court under federal and state USERRA violation as mandated by U.S. Congress and the Va. General Assembly. Where it clearly states that a state can give a veteran employee more USERRA protection rights. However, a state General Assembly cannot take away any USERRA protection laws granted by the U.S. Congress under federal statute 38 U.S.C. §§ 4301 thru 4335. Where the Va. General Assembly under state statute Va. Code § 44-93.5 has stated that the state employee can file any type of complaint to force the state employee to comply to include a state assistance attorney General. Where the state affected employees upon request the Attorney General personally or through one of his assistance, such denied

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their immunity from congressionally authorized suits pursuant to the "'plan of the Convention,'" as part of "'the structure of the original Constitution itself.'" *Penn East Pipeline Co. v. New Jersey,* 594 U.S. ___, ___ (2021) (slip op., at 14) (quoting *Alden v. Maine,* 527 U.S. 706, 728 (1999)).

the benefits of Va. Code§ 44-93. Appellant file state employee grievances because an employee grievance is a property rights given to the state employee by the Virginia General Assembly and if denied by the Circuit court can file a state USERRA complaint in court. To enforce a state USERRA violation as mandated by the Virginia General Assembly. Under federal USERRA statute 4323(b)(2) under deprivation of vested state employee property rights under the 14th Amendment as a state employee vested property right and as a state employee and a veteran employee returning from war. Appellant citing the case of *Garraghty v. Com. of Va. Dept. of Corrections*., 94-1870. Garraghty was also denied state employee property rights under employee grievance procedure under Due process of rights under the 14th Amendment protection. Appellant did not file two USERRA complaints in federal court under state employee grievance complaint under federal statute 38 U.S.C. § 4323(b)(2) in state Circuit Court but three. *See* in Sussex County Cir. Ct. Case No. CL 12-18 dated May 14, 2012, under discrimination and USERRA violation for Sergeant and Lieutenant and C.A. No. CL19000224-00. Appellee is under the appearance that in Case 3:2lcv168 a grievance ruling by a Director overrides a federal USERRA violation. Where Appellant's Doc. No. 33-1, 33-2 and 33.3 override a USERRA law violation by the

state circuit Court. Which is simply [8] [9] not true under 38 U.S.C. § 4302(b).[10]

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[8] **§ 44-93(A). Leaves of absence for employees of Commonwealth or political subdivisions.**

> A. All officers and employees of the Commonwealth or of any political subdivision of the Commonwealth who are former members of the armed services or members of the organized reserve forces of any of the armed services of the United States or National Guard shall be entitled to leaves of absence from the irrespective duties, without loss of seniority, accrued leave, or efficiency rating, on all days during which they are engaged in federally funded military duty, to include training duty, or when called forth by the Governor pursuant to the provisions of § 44-75.1 or § 44-78.1.

There shall be no loss of regular employer pay during such leaves of absence, except that paid leaves of absence for federally funded military duty, to include training duty, shall not exceed 21 workdays per federal fiscal year, and except that no officers or employees shall receive paid leave for more than 21 workdays per federally funded tour of active military duty.

When relieved from such duty, they shall be restored to positions held by them when ordered to duty. If the office or position has been abolished or otherwise has ceased to exist during such leave of absence, they shall be reinstated in a position of like seniority, status and pay, if the position exists, or in a comparable vacant position for which they are qualified, unless to do so would be unreasonable.

For the purposes of this section, with respect to employees of the Commonwealth or its political subdivisions who do not normally work approximately equal workdays on five or more days of each calendar week, the term "workday" shall mean 1/260 of the total working hours such employee would be scheduled to work during an entire federal fiscal year, not taking into account any state holidays, annual leave, military leave, or other absences. Where such employee returns from federally funded military duty and the eight-hour rest period required by the Uniformed Services

D. Morse IV

Appellee is stating that on page 8: That on March 29, 2021, Appellant filed his initial complaint in federal district court in this case (along with an application to proceed in forma pauperis. First, Appellant never filed a complaint under March 29, 2021. Appellant filed a complaint on March 12, 2021, within the 90 Right to Suit under Title VII and Appellant never filed to proceed in forma pauperis in case No.

Employment and Reemployment Rights Act (38 U.S.C. § 4301 et seq.) overlaps such employee's scheduled work shift, the employee shall receive paid military leave to the extent of such overlap.

[9] § **44-93.5. Penalties for denial.**

If any employer fails or refuses to comply with the provisions of §§ 44-93, 44-93.2, 44-93.3 and 44-93.4, the circuit court having jurisdiction over the employer's place of business may, upon the filing of a motion, petition, or other appropriate pleading by the employee, require the employer to comply with §§ 44-93, 44-93.2, 44-93.3 and 44-93.4 and to compensate the employee for any loss of wages or benefits and reasonable attorney fees and costs incurred by reason of the employer's unlawful failure or refusal. Upon request of the affected employee, the Attorney General may represent personally or through one of his assistants, such employee denied the benefits of §§ 44-93, 44-93.2, 44-93.3 and 44-93.4 while in the performance of state active duty.

[10] **38 U.S.C. § 4302**

Section 4302-Relation to other law and plans or agreements

(b) This chapter supersedes any State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter, including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit.

3:2l-cv-00168. Appellee stated that the district court stated that "[t]he Amended complaint SHALL COMPLY with the following directions": Appellant follows all of the district court directives to the best of Appellant abilities. All of Appellant's claims were filed with prima facie exhibits to support any of the Appellant's USERRA claims that the opposing party and the district court will consider in a conclusory form. That's connected to other state and federal violations with supporting documents in complaints to comply with FRCP 8 and 10 as well Appellant realized that all claims filed in a federal court are in a conclusionary form to include a short and plain statement unless the Plaintiff can show factual evidence to support the Plaintiff/ Appellant's violation claims against the defendant. Which is why FRCP Rule 12 must be addressed first as stated by Judge Robert E. Payne in Morse 2 USERRA complaint 3:13-cv-361 and Appeal Case No. 14-1399 before any dismissal under Rule 8 and 10 Rule 12 must be addressed first. Since this Second Amended Complaint is a trap and Appellant is fully aware that it is a trap. Appellant bringing misconduct to light in this Second Amended Complaint informed the court that Appellant was very much aware of the disparity treatment and double standards to a disabled veteran under USERRA violation by the federal district court Judge Lauck and the Virginia Attorney Office under 38 U.S.C. § 4323 et seq and Race. *See* in Second Amended Complaint page 7 thru page 13 in this.

Where the opposing counsel Elizabeth B. Myers, under disparity treatment and discrimination in a similar USERRA case settled this USERRA complaint that involved the Virginia Retirement System. Opposing

Counsel Myers and her superiors settled this USERRA case. *Gunn v. Prince George County, Virginia and United States of America Plaintiff v. Virginia Retirement System Relief*-Defendant Civil Action No. 3 :21-cv-00631. Where veteran Gunn, a police Officer/Correctional officer and White in race and Appellant a Correctional/ police officer, a veteran is Black in race African American, Gunn filed a USERRA violation with DOL Case and Appellant filed a complaint with DOL as well. Both cases were unresolved. Both cases were forwarded to the DOJ Civil Right Division. This is where the similarity ends: The DOJ represented Veteran Gunn and Appellant was informed that Appeal can seek outside representation or Appellant can represent himself. November 17, 2021, Judge Lauck under USERRA violation removed Appellant paid legal counsel under USERRA violation 38 U.S.C. § 4323(11)(2) and ADA from Appellant's USERRA complaint and informed Appellant that Appellant can represent himself in this USERRA violation. Appellant in Motion for Reconsideration informed Judge Lauck that Appellant is qualified to do a jury trial and that Appellant has a medical disability (Extreme PTSD) and cannot represent himself. Appellant needs his paid representation as mandated by Court in Morse I complaint under this USERRA violation. Judge Lauck denied Appellant legal representation under USERRA violations and in Morse I complaint and stated that Appellant with extreme PTSD can represent himself in the USERRA complaint. Appellant is entitled to legal counsel that Appellant paid for and Appellant wants his legal counsel as mandated by Congress and the Virginia General Assembly under

38 U.S.C. § 4323(11)(2) and Va. Code § 44-93.5.[11] Where opposing counsel have stated that Appellee Grabs for the DHRM found no such evidence, as noted initially in Morse Qualification Ruling dated March 22, 2019 (Ruling No. 2019-4857) and subsequent Reconsidered Qualification Ruling dated April 18, 2019 (Ruling No. 20 I 9-4908). Where Appellee Grab duty is to enforce federal and state laws and state policies. Not protect the managers that violated federal and state USERRA law and state policies. Appellant's complaint is a state employee grievance complaint under discrimination and USERRA violation complaint to force the state employers to comply with the law that protects the veteran employee under state and federal USERRA statute. Appellee Grab under USERRA violation refuses to enforce the state and federal USERRA law that deals with the veteran employee returning from war and have been trying to get promoted to Lieutenant under USERRA statute 38 U.S.C.§ 43 11 from August 2011 under USERRA violation and continued to be denied.

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[11] **(h)Fees, Court Costs.–**

(1) No fees or court costs may be charged or taxed against any person claiming rights under this chapter.

(2) In any action or proceeding to enforce a provision of this chapter by a person under subsection (a)(2) who obtained private counsel for such action or proceeding, the court may award any such person who prevails in such action or proceeding reasonable attorney fees, expert witness fees, and other litigation expenses.

V. Appellant Response to Appellee's Argument

a. Standard of Review

Appellee have requested that the 4th Cir. Ct. of Appeal Dismissed With Prejudice Appellant complaint based on FRCP 41 (b) for failure to comply with a court order(as well as for failing to comply with the applicable pleadings standards under the federal rule) is reviewed for abuse of discretion. *See Macie v. Mora*, No 18-2304, 2019.

Appellant Response No. 1: First, Appellant complaint is under USERRA violation under federal statute 38 U.S.C. §§ 4301, 4335 where Appellant is a disabled Veteran with a disability under PTSD and informs the district court of the veteran medical condition. Where on Order Document No. 17 dated 11-16-202 1, district court judge stated that Plaintiff Roger Lee Morse comes before the Court on two motions: (1) Plaintiff's counsel JeRoyd W. Greene, III Motion to Withdraw as Counsel of Record (the "Motion to Withdraw"), (ECF No. 13), and (2) Plaintiff Motion for Leave of Court for Extension of Time (the" Motion for Leave"), (ECF No. l 4). In his Motion for Leave, Morse states that because his counsel has moved to withdraw, he "needs a reasonable amount of time to engage and retain new counsel to represent his interest and position in this litigation."(Motion for Leave!.) October 29, 2021, this Court enter a Notice directing Morse to obtain substitute counsel by November 8, 2021, and informing him that if he did not do so, he would be transferred to pro se status (ECF No. 15) November 8, Morse filed a Motion of Clear Understanding of conflict Found by Counsel to the Court on Request to Withdraw as Counsel (the "Motion of Clear

Understanding"). (ECF No. 16.) In this filing, Morse appears to object to Green's withdrawal. (Id. 1.) He seems to claim that he is entitled to counsel, and a prior order in another case before this Court mandated that he retain counsel. (Id. 2-3 .) Morse attaches the prior order to his motion, alongside his Veteran Affair benefits. (ECF No. 16-1.) The prior order is from the case of *Morse v. Va. DOC* Case No. 3:01-cv-00337 dated March 20, 2002, that if Plaintiff refiles claims that are dismissed without prejudice Plaintiff must have legal representation once Plaintiff refiles in district court. Which is Plaintiffs legal right to counsel in this case. But this is not the only case that Plaintiff is entitled to legal counsel in. Plaintiff is entitled to paid legal counsel under USERRA violation against the state employer under 38 U.S.C. § 4323 (h)(l)(2) that is connected to Morse 1 complaint in case No. 3:0l-cv-00337. Appellant is also entitled to free legal counsel upon the request to the Virginia Attorney General Officer under Va. Code § 44-93.5. Appellant also informed the court that Appellant's case is a jury and Appellant has no experience in conducting a jury trial and the federal district court cannot force a pro se to conduct a jury trial with no experience. Therefore FRCP 41 does not apply to USERRA complaints when the Appellant has met all the federal court requirements under USERRA prior to this Rule 41 requirement.

b. Dismissal with Prejudice is Proper per FRCP 41(b)

Appellee is stating that the district court noted, dismissal of an action with prejudice pursuant to FRCP 4 1 (b) is appropriate when a plaintiff fails to comply with a court order.

Appellant Response No. 1: First, Rule 41 does not apply when it is the district court Judge that removed Appellant's legal counsel and tells the Pro se that he can represent himself in a USERRA violation. Where a jury trial is demanded under USERRA statute 38 U.S.C. § 4323 et seq where a veteran filing a USERRA complaint to enforce a USERRA violation against the employer in a jury trial is demanded and a pro-se cannot conduct a jury trial. Opposing counsel stated in Footnote 6 that Appellant does little to address the district court's dismissal of the Second Amended, other to say, without any factual support, that it was done "to help the opposing party out." Pet. at 21. Indeed, Morse even suggests without support that the district court's dismissal was predetermined (i.e., m "[I]f you know what the outcome is exactly, how is the [Appellant] getting a fair trial?" Appellant supporting document is the Court Order dated November 16, 2021, Where Plaintiff was transparent in informing the district court judge that Plaintiff has a legal right to legal representation. Where district courts have stated he seems to claim that he is entitled to counsel, and a prior order in another case before this Court mandated that he retain counsel. (Id. 2-3.) Morse attaches the prior order to his motion, alongside his Veteran Affair benefits. (ECF No. 16-1.) The prior order is from the case of *Morse v. Va. DOC* Case No. 3:0l-cv-00337 dated March 20, 2002, that if Plaintiff refiles claims that are dismissed without prejudice Plaintiff must have legal representation once Plaintiff refiles in district court. Which is Plaintiffs legal right to counsel in this case that is connected to morse 2 and this case. But this is not the only case that Plaintiff is entitled to legal counsel in. Plaintiff is entitled to paid legal counsel under USERRA violation against the

state employer under 38 U.S.C. § 4323(h)(l)(2) that is connected to Morse 1 complaint in case No. 3:01-cv-00337. Appellant is also entitled to free legal counsel upon the request to the Virginia Attorney General Officer under Va. Code § 44-93.5. Appellant also informed the court that Appellant's case is a jury trial and Appellant has no experience in conducting a jury trial and the federal district court cannot force a pro se to conduct a jury trial with no experience. Therefore FRCP 41 does not apply to USERRA complaints when the Appellant has met all the federal court requirements under USERRA prior to this Rule 41 requirement.

VI. Appellant Conclusion/Relief Request

Appellant is stating in light of the foregoing, the district court's order dismissing Appellant Second Amended Complaint with prejudice per FRCP 4 1(b) should not been granted or be affirmed. For the first reason the 4th Cir. Ct. of Appeal already affirmed that Appellant has a USERRA violation when it granted that the Appellant a waiver of filing fee under USERRA violation. Where DOL also found the employer under USERRA violation under 38 U.S.C. § 4323 under Discrimination and Improper Reinstatement. Under USERRA violation Appellant the veteran under USERRA violation is entitled to a jury trial under USERRA protection. The U.S. Congress stated that Appellant can have legal counsel in this USERRA violation under 38 U.S.C. § 4323(h)(2). Where Appellant paid for legal counsel and the district court removed the veteran legal counsel from legal trial. Therefore, the district Court owes Appellant one legal counsel with reimbursement of legal fee. The state of Virginia has stated under state USERRA violation,

that the veteran employee whose USERRA right has been violated by the state employer can request legal representation to the Virginia Attorney General Office under Va. Code § 44-93.5. Where the state Cir. Ct, federal district court, and the Attorney General Officer has repeatedly denied the Appellant the veteran with extreme PTSD under the ADA protection from having legal counsel that's mandated by the Va. General Assembly.

The court cannot attack a Veteran for enforcing USERRA law under 38 U.S.C. § 4323(h) and § 4327(b). The court under USERRA violation cannot dismiss Appellant's USERRA complaint with prejudice or award the state employer cost and /or other relief as the Court deems appropriate as punishment because the veteran employers enforced the federal and state USERRA law that protects the veteran.

CERTIFICATE OF SERVICE:

Respectfully Submitted,

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MR. MORSE'S PETITION FOR RELIEF UNDER RULE 60, FED. R. CIV. P. (JANUARY 14, 2024)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ROGER LEE MORSE,

Plaintiff,

v.

VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL.,

Defendant.

Civil Action No. 3:21-cv-0168

MOTION FOR RELIEF FROM DISMISSAL WITH PREJUDICE UNDER FRCP 60(B)(1) AND 60(B)(6)

Roger Lee Morse, by and through newly acquired counsel, Tully Rinckey, PLLC, hereby requests relief from the Court's order of August 11, 2023, (Dkt. 68), that the case be reopened, and that counsel be given 30 days to file an Amended Complaint in keeping with the requirements of this court's order of May 24, 2023 (Dkt. 59, p. 10-11). He requests relief under Rule 60(b)(1) because the court's misstatement of the time limit for appeals has deprived him of the ability to

seek relief in the appellate courts. More importantly, he requests relief under Rule 60(b)(6), because with the aid of counsel he is now better equipped to articulate his claims to the court's satisfaction, and to have his case decided on its merits. This request is based on the following facts and on the following grounds.

PROCEDURAL BACKGROUND

Mr. Morse originally filed his action *pro se* on March 12, 2021. On May 10, 2021, the Court ordered him to file an Amended Complaint to comply with Fed. R. Civ. P. 8 (Dkt. 7, p. 3-4). Mr. Morse filed his Amended Complaint on December 15, 2021 (Dkt. 21). In January 2023, Defendants filed several motions to dismiss (Dkt. 32, 34, 36). On May 24, 2023, the Court dismissed Mr. Morse's complaint without prejudice, but gave him time to file a second Amended Complaint in compliance with certain conditions (Dkt. 59, p. 10-11). On August 8, 2023, Mr. Morse filed his second Amended Complaint (Dkt. 65).

On August 11, 2023, the court dismissed Mr. Morse's complaint with prejudice, on the grounds that it did not clearly state his claims for relief (Dkt. 67, p. 2-3; Dkt. 68). The Court informed Mr. Morse that he had 60 days to appeal the Court's Order (Dkt. 68). This was a mistake on the Court's part. In accordance with the Court's order, Mr. Moore filed his Notice of Appeal on October 2, 2023 (Dkt. 70). However, Mr. Morse has now retained counsel, and learned that his Notice of Appeal was untimely under 21 U.S.C. § 2107(a), and that the Court's mistake in misstating the deadline cannot support his appeal under *Bowles*

v. Russell, 551 U.S. 205, 211-13 (2007).[1] After consultation with counsel, Mr. Moore believes his interests would be better served by reopening the case and, with the aid of counsel, filing a proper complaint that complies with the Court's requirements.

ARGUMENT

Fed. R. Civ. P. 60(b) provides that "[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding" for reasons including "mistake" or "any other reason that justifies relief." "A party seeking relief under Rule 60(b) must cross an initial threshold, showing timeliness, a meritorious defense, a lack of unfair prejudice to the opposing party, and exceptional circumstances." *Smith v. Purnell*, No. 1:11CV922, 2012 WL 948411 at *1 (Mar. 20, 2012), *citing Dowell v. State Farm Fire & Casualty Auto. Insurance Co.*, 993 F.2d 46, 48 (4th Cir.1993). Rule 60(b)(6), as a "catchall" provision, vests "wide discretion" in the trial court. *Buck v. Davis*, 580 U.S. 100, 123 (2017).

Mr. Morse's request is timely. For his 60(b)(1) request, he is well inside the one-year limit of Rule 60(c)(1). Insofar as requests under Rule 60(b)(6) must be made in "a reasonable time," a phrase which vests "considerable latitude of judgment" in the trial court. *Moses v. Joyner*, 815 F.3d 163, 167 (4th Cir. 2016). The Court dismissed Mr. Morse's complaint less than five months ago, and he has only recently retained counsel.

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[1] 28 U.S.C. § 2107(b) imposes a 60-day time limit for filing a notice of appeal when any defendant is an agent or department of the *federal* government; but as Mr. Morse's suit was against State officials, he was subject to the 30-day time limit of 28 U.S.C. § 2107(a).

If he were seeking relief under one of the other provisions of Rule 60(b), he would be far inside the one-year time limit set for those provisions. The Court would be well within its rights to consider this petition timely.

Mr. Morse, as plaintiff, has previously been unable to demonstrate the merits of his case. Mr. Morse's case was dismissed because, without legal training, he did not understand how to frame the language to make his case intelligible to the Court. Now that he has retained counsel in justice, he should have a chance to do so. In the context of default judgments, the courts of this circuit have often noted a strong legal presumption in favor of trial on the merits. *See Davis v. Carabo*, 50 F.R.D. 468, 469 (D.S.C. Oct. 30, 1970), *quoting Thorpe v. Thorpe*, 364 F.2d 692, 694 (D.C. Cir. 1966) ("The philosophy of modern federal procedure favors trial on the merits"); *Hall v. Jomar Logistics, Inc.*, No. 2:05-2823-PMD, 2006 WL 1889165 at *2 (D.S.C. July 7, 2006), *quoting* 10 Wright, Miler & Keene, *Federal Practice and Procedure* § 2681 (1983) ("There is a strong public policy, supported by concepts of fundamental fairness, in favor of trial on the merits"); *United States v. Wallis*, No. 6:14-CV-00005, 2015 WL 13858921 at *2 (W.D. Va. Aug. 3, 2015) ("The law favors trial on the merits"); *Small v. Ramsey*, No. 1:10CV121, 2010 WL 4394084 at *3 (N.D.W.Va. Nov. 1, 2010), *quoting McDaniel v. Romano*, 190 S.E.2d 8, 11 (W. Va. 1982) ("The policy of the law favors the trial of all cases on their merits"). To permit Mr. Morse to reopen his case, with the assistance of counsel to ensure his future pleadings meet the requirements of the Court, would be in keeping with this fundamental public policy principle. If his case, when properly

articulated with the aid of counsel, has merit, he ought to be able to bring it. If it does not, then it ought to be dismissed on consideration of its merits, and not simply because he was unable to articulate it to the Court's satisfaction.

To grant this relief would not impose undue hardship on the defendants. The defendants are departments and officials of the Commonwealth of Virginia, represented by lawyers employed full-time by the state for the purpose of defending them and the state's interests. *See* Dkt. 33, p. 20-21 (Defendants Christopher Grab and Carl Schmidt are represented by the Attorney General's Office in both their official and individual capacities); Dkt. 34, p. 1-2 (Defendant William Muse is represented by the Attorney General's Office in his official and individual capacity); Dkt. 36, p. 1-2 (the remaining Defendants are represented by the Attorney General's Office, in both official and individual capacities).[2] A private individual forced to retain counsel at his own expense might justly complain about the costs of further litigation; but the Commonwealth understandably employs counsel precisely to relieve its officials of the financial burden of defending lawsuits. The Commonwealth must be held strictly to its obligations both as a government subject to the Constitution. As an employer subject to state and federal law, to require the Commonwealth to require its officials to face the claims against them on their merits would not be an undue burden.

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[2] The memoranda in support of the defendants' motions to dismiss are identical or nearly so, showing that no great duplication of effort was needed by the State's attorneys in responding to Mr. Morse's litigation.

Furthermore, the case previously never proceeded past the dismissal stage. The Defendants never answered the Complaint, nor were they subjected to the discovery process. The Court granted their motions to dismiss, not because Mr. Morse's claims necessarily lacked merit, but because the Court had trouble discerning what those claims were. The Defendants likewise expressed some bafflement on the subject. Dkt. 37, p. 10-11 (Defendants complain that the allegations "do not . . . provide sufficient detail for any of the VDOC defendants to respond thereto"; and cannot "properly respond" to Mr. Morse's complaint). In a real sense, Mr. Morse's case never truly began, and thus it did not impose an undue hardship on the Commonwealth or its officials.

With respect to extraordinary circumstances, the Supreme Court has held that "[i]n determining whether [they] are present, a court may consider a wide range of factors. These may include, in an appropriate case, the risk of injustice to the parties and the risk of undermining the public's confidence in the judicial process." *Buck v. Davis*, 580 U.S. 100, 123 (2017) (internal quotes omitted). In this case, the risk of injustice to the plaintiff is considerable because the merits of Mr. Morse's case have never been properly ascertained, let alone considered; while the risk of injustice to the defendants if the case is reopened is negligible. His circumstances are also extraordinary insofar as he lost his right to appeal by relying on a misstatement of law by the Court itself. Confidence in the judicial system might well be undermined if a nonlawyer first loses his claims because he lacks the skill of an advocate, then loses his access to the appellate courts because he was (inadvertently and unin-

tentionally) misinformed by the Court from which he was appealing.

A fair solution to Mr. Morse's situation is to allow him a chance to make his case with the aid of lawyers. If he can do so, his case should proceed to a decision on the merits. If he cannot, his case can be dismissed again. However, Mr. Morse's case needs to stand or fall on its facts, and not on his own lack of legal training.

We respectfully ask this Court to grant relief from its August 11, 2023, dismissal order, and give Mr. Morse 30 days to file an Amended Complaint with the aid of counsel in accordance with the court's previous orders.

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Date: January 14, 2024

MR. MORSE'S THIRD AMENDED COMPLAINT (SEPTEMBER 12, 2024)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ROGER LEE MORSE,

Plaintiff,

v.

VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL.,

Defendant.

Civil Action No. 3:21-cv-0168

AMENDED COMPLAINT

Pursuant to Judge M. Hannah Lauck's April 30, 2024, Memorandum, COMES NOW Plaintiff, by and through his undersigned counsel, and respectfully presents this Amended Complaint against the Virginia Department of Corrections (hereinafter, "DOC" or "Defendant"), for the cause of action stated as follows:

INTRODUCTION

1. Plaintiff brings this action based on the Uniformed Services Employment and Reemployment Rights Act of 1994, (hereinafter, "USERRA"), under

38 U.S.C. § 4301, *et seq.,* 20 C.F.R. § 1002.192, 20 C.F.R. § 1002.196, and 20 C.F.R. § 1002.198, based on being denied certain terms, conditions and privileges of employment.

2. Plaintiff demands a trial by jury on all triable issues.

PARTIES

3. Roger L. Morse, Plaintiff, is an individual resident of North Prince George, Virginia.

4. The Virginia Department of Corrections (" DOC"), Defendant, is headquartered in Richmond, Virginia, at 6900 Atmore Drive, Richmond, Virginia 23225.

JURISDICTION & VENUE

5. This is also an action for damages pursuant to the Uniformed Services Employment and Re-employment Act, as codified as 38 U.S.C . § 4301, *et seq*. ("USERRA"), and is within the jurisdiction of this Court pursuant to 38 U.S.C. § 4323(b)(2) and 28 U.S.C. § 1331.

6. Venue is proper in this judicial circuit pursuant to the statute identified above.

FACTUAL ALLEGATIONS

7. Roger L. Morse is a now a retired U.S. Army Reserve Sergeant Major (E-9) with over 36 years of military experience.

8. Mr. Morse also has a law enforcement background as a Police Officer with the Prince William

County Police Department from May 1984 to June 1985.

9. Due to the significant commute, Mr. Morse resigned his position with the police department and applied to work with DOC.

10. Mr. Morse started his career with DOC on or about June 26, 1986, as a Corrections Officer at the Virginia State Penitentiary in Richmond, Virginia.

11. At this time, Mr. Morse was still an Army Reservist.

12. After the Virginia State Penitentiary closed in December 1990, Mr. Morse was transferred to Greensville Correctional Center in Jarratt, Virginia.

13. Unfortunately, on April 8, 1995, Mr. Morse lost his son to suicide, and he made the decision to take a leave of absence from DOC without pay.

14. On or about December 25, 1997, Mr. Morse returned to DOC as a probationary Corrections Officer at Greensville Correctional Center at the same pay grade (Grade 7, Step 10) at an annual salary of $24,885.00 plus a 10% increase ($2,488) to $27,373 should he complete his probationary period.

15. During his probationary period, Mr. Morse was terminated on January 20, 1998, due to a disagreement with Chief Warden Garrity related to a previous work incident.

16. After an unsuccessful resolution of his dismissal grievance, Mr. Morse sued DOC for unlawful termination and other claims.

17. Though the court process dismissed Mr. Morse's claims, he was reinstated on or about December 16,

2002, to the DOC as a Correctional Officer with back pay at a salary of $39,290.00 at Sussex II State Prison, a higher security level facility.

18. At the same time of this reinstatement, Mr. Morse also received military orders for deployment to Iraq.

19. On or about March 3, 2003, Mr. Morse returned to work at Sussex II State Prison and was supposed to receive back pay, front pay, and restoration of benefits and leave, including retirement credits.

Virginia DOC violated the "Escalator Principle" Negatively Impacting His Pay, Promotion Opportunities and Retirement Credits.

20. On or about April 1, 2003, Mr. Morse discovered that his pay did not reflect the increase or had not been given his back pay. Therefore, he contacted Ms. Letha Hite in DOC Human Resource Officer, and Virginia Department of Human Resource Management to confirm these reinstatement terms.

21. On or about July 11, 2003, Mr Morse received an Order for Mobilization to Iraq. Prior to leaving, Mr. Morse signed all the necessary documents to acknowledge his backpay and the refund of his retirement credits.

22. In August 2003, Mr. Morse left for Ft. Bliss, Texas to mobilize to Iraq. 23. On September 10, 2003, the Virginia Department of Human Resource Management reflected that Mr. Morse's salary was $35,720.00.

24. On March 10, 2004, Mr. Morse returned from military leave and discovered that his pay had been

reduced to $26,299.00, while he was on leave. This salary was less than his rehire salary in December 1997.

25. DOC violated Mr. Morse's rights under USERRA by reducing his salary at Sussex II State Prison while he was on military leave.

26. On October 14, 2009, Mr. Morse turned 50 years old and qualified for full unreduced retirement benefits under the Virginia Law Enforcement Retirement System (VALORS) with 23 years of state service.

27. In August 20 10, Ms. Hite, DOC Human Resource Officer, refused to discuss this reduction in pay with Mr. Morse to fix this pay issue.

28. Mr. Morse seeks all back pay due to him from December 2002 through March 2004, the period in which Mr. Morse ' s salary was reduced below $35,720.00/year.

29. DOC's failure to maintain Mr. Morse's appropriate salary impacted the calculation of his pension with the Virginia Law Enforcement Retirement System (VALORS).

30. In addition to the pay disparity, DOC made Mr. Morse a new hire each year between August 2003 and August 2010, which placed his job, benefits and retirement in jeopardy, instead of acknowledging his returning veteran status as USERRA requires.

31. Mr. Williams Breed, DOC HR Manager, admitted that DOC's actions in making Mr. Morse a new hire for each of his deployments were wrong.

32. DOC has yet to rectify this matter such that Mr. Morse is given all the back pay due to him, and a

proper calculation of his retirement benefits, leave, and other fringe benefits.

33. Mr. Morse's rights under USERRA have also been violated under the escalator principle by placing him in a new hire status each time he deployed.

34. Between August 2011 and December 2019, Mr. Morse applied for the position of Lieutenant more than ten (10) times.

35. Between August 2011 and December 2019, Mr. Morse applied for the position of Sergeant more than ten (10) times, as well.

36. Though Mr. Morse was granted interviews for both positions, he was never selected despite his experience and tenure with DOC.

37. Yet, Mr. Morse states that Tonyetta Ruffin was promoted to Sergeant after being a Correctional Officer for only two (2) years, and was a Treatment Officer and Assistant Institutional Training Officer prior to her promotion.

38. Ms. Ruffin has no military experience.

39. Brandon Scurlock, a Correctional Officer at Sussex I State Prison, was promoted to Sergeant without a little over a year of Correctional experience.

40. Mr. Scurlock has no military experience.

41. Mr. Morse states that there are many other people with no military background who were selected for these positions as they became available.

42. Mr. Morse states that these promotions would have given him at least a 10% salary bump on top of his corrected annual salary.

43. Mr. Morse was never given a reason for his non-selection but believes there was significant anti-military animus which has also been evident in his years of pay disparities during and after his military deployments.

44. Between 2011 and 2020, Mr. Morse filed multiple grievances against DOC based on violations of USERRA, but these grievances did not result in corrected pay or promotion for Mr. Morse.

45. Mr. Morse wants to retire but cannot do so until his back pay and retirement pay calculations are corrected.

CAUSES OF ACTION

COUNT I

A. Violation of USERRA-38 U.S.C. § 4301 et seq. (Violation of Re-Employment under Section 4311)

46. Plaintiff reincorporated all information and allegations contained in the preceding paragraphs as if fully set forth herein.

47. Under 38 U.S.C. § 4311, an employer may not discriminate in employment against or take any adverse employment action against any person because such person (1) has taken action to enforce a protection afforded any person under this chapter; . . . or (4) exercised a right provided for in this chapter.

48. Mr. Morse was discriminated against when he was denied opportunities for promotions to Sergeant and Lieutenant numerous times between August 2011 and December 2019.

49. Mr. Morse was qualified for these pistons as he was granted interviews.

50. However, he weas never told why he was not selected for these positions, which would have significantly elevated his salary.

51. Prior to and after applying for these positions, Mr. Morse filed state grievances against DOC to enforce his reemployment and pay issues pursuant to USERRA.

52. Mr. Morse believes that DOC's refusal to promote him is a violation of 38 U.S.C. § 4311.

COUNT II

B. Violation of USERRA-38 U.S.C. § 4301 et seq. (Violation of Re-Employment under Section 4312)

53. Plaintiff reincorporated all information and allegations contained in the preceding paragraphs as if fully set forth herein.

54. Under 38 U.S.C. § 4312(a)(l) and (2), a service-member is entitled to prompt reemployment in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service.

55. For this reason, DOC violated Mr. Morse's rights each time it designated Mr. Morse a new hire, interrupting his tenure, and reducing his pay between 2003 and 2021.

56. DOC has yet to rectify Mr. Morse's pay discrepancies since 2003 and provide him back pay as a result of the admitted discrepancies.

57. Mr. Morse believes that DOC's refusal to promptly reemploy him with his pay properly calculated upon his return from duty is a violation of 38 U.S.C. § 4312.

COUNT III

C. Violation ofUSERRA-38 U.S.C. § 4301 et seq. (Violation of Re-Employment under Section 4318)

58. Plaintiff reincorporated all information and allegations contained in the preceding paragraphs as if fully set forth herein.

59. Under 38 U.S.C. § 4318(a)(2)(A), a person reemployed under this chapter shall be treated as not having incurred a break in service with the employer or employers maintaining the plan (employee pension benefit plan) by reason of such persons' period or periods of service in the uniformed services.

60. DOC clearly violated Mr. Morse's rights when DOC designated him a new hire each time he returned from military duty, which broke his service for retirement credit.

61. DOC has not rectified this issue to date which is why Mr. Morse is unable to retire with the service credits that he has earned.

62. Mr. Morse believes that DOC's refusal to properly report his retirement service credits is a violation of 38 U.S.C. § 4318.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Honorable Court:

1. Reinstatement with all back pay and lost wages, plus interest, since 1997;
2. Reinstatement of all pension credits, including hazardous duty credits, retroactive to January 1998;
3. Liquidated damages for the intentional failure of Defendant to comply with USERRA reemployment and pension regulations;
4. Payment of attorney fees and court costs; and
5. Any equitable relief the Court deems just.

Respectfully Submitted,

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MR. MORSE'S PETITION FOR A WRIT OF EXTRAORDINARY RELIEF (MARCH 18, 2025)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

In re ROGER LEE MORSE

No. 25-1252

On Petition for a Writ of Extraordinary Relief to the United States Court of Appeals for the Fourth Circuit

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PETITION FOR A WRIT OF EXTRAORDINARY RELIEF

SUBMITTED BY:

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RELIEF SOUGHT

The petitioner, Roger Lee Morse, respectfully requests that this court reopen and dismiss his prior appeal (No. 23-2039), and instruct the U.S. District

Court for the Eastern District of Virginia to consider his Rule 60 petition on its merits.

ISSUE PRESENTED

Whether this court would be justified in reopening and dismissing Mr. Morse's prior appeal, in light of the fact that he attempted to abandon rather than pursue it; and his petition for relief in the trial court was denied as moot rather than heard on its merits.

FACTS

Mr. Morse filed his case *pro se* in the Eastern District of Virginia in March.[1] His complaint was never answered, but for the entire time he proceeded *pro se*, his case languished through motions to dismiss, motions to strike, motions to amend, and orders from the trial court related to the same.

After Mr. Morse had made two efforts to amend his complaint, the trial court dismissed it, on the grounds that he had not complied with an order requiring him to adhere to the court's pleading standards. Dkt. 67 at 2-3. In its order dismissing the case on August 11, 2023, the trial court told Mr. Morse he had 60 days to file his appeal. Dkt. 68 at 1. Relying on this order, Mr. Morse filed his notice of appeal on October 4, 2023, more than 30 but less than 60 days after the court's order. Dkt. 72. After that, he retained undersigned counsel to assist with his appeal.

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[1] The merits of his claims, which were not well articulated in his original *pro se* documents, may be seen by perusing Dkt. 82, an amended complaint he later attempted to file in the trial court, but which was not accepted as shown below.

Counsel quickly realized that Mr. Morse's notice of appeal was untimely under 21 U.S.C. § 2107(a), and that Mr. Morse's appeal was in any case unlikely to succeed on its merits given its drafting and the trial court's prior orders. Counsel therefore advised Mr. Morse to abandon his appeal, and seek to reopen his case in the trial court under Rule 60, Federal Rules of Civil Procedure.

Counsel filed Mr. Morse's Rule 60 petition on January 14, 2024, and articulated its request for relief as follows:

> [Mr. Morse] requests relief under Rule 60(b)(1) because the court's misstatement of the time limit for appeals has deprived him of the ability to seek relief in the appellate courts. More importantly, he requests relief under Rule 60(b)(6), because with the aid of counsel he is now better equipped to articulate his claims to the court's satisfaction, and to have his case decided on its merits.

Dkt. 73, p. 1. Mr. Morse did *not* ask to have his appeal delay excused; he asked for an opportunity to submit a new amended complaint with the assistance of counsel. Dkt. 73, p. 3-4. The trial court never considered this relief.

The motion was fully briefed, but the trial court did not act on it until after this court sent follow-up notices on March 13 and April 10, 2024 (Dkt. 77-78). On May 2, 2024, the trial court issued an opinion and order, stating that Mr. Morse had established excusable neglect warranting an extension of the 30-day appeal period, relief he had not requested. Dkt. 80. In this

opinion, the trial court denied Mr. Morse's Rule 60 request as moot.

On September 12, 2024, counsel attempted to file an amended complaint, one that was more in keeping with court requirements than Mr. Morse's *pro se* efforts. Dkt. 81. The trial court rejected this complaint on the basis of the pending appeal. Dkt. 83. On October 22, 2024, this court rejected the now-reopened appeal. Dkt. 84. The trial court issued an order dismissing the case, and declaring any further trial court filings in the case to be improper. Dkt. 89.

REASONS WHY THE WRIT SHOULD ISSUE

The All Writs Act, 28 U.S.C. § 1651, bestows on this court a "residual" power to issue writs which are not otherwise covered by statute. *Carlisle v. United States*, 517 U.S. 416, 429 (1996), *citing Pennsylvania Bureau of Correction v. United States Marshals Service*, 474 U.S. 34, 43 (1985). The Act "invests a court with a power essentially equitable," so that it is not appropriate when other, adequate remedies at law are available. *Clinton v. Goldsmith*, 526 U.S. 529, 538 (1999). Here, no other remedy is available to Mr. Morse, as the trial court has declared any further filings to be procedurally improper. Dkt. 89, p. 3. Through this petition he is seeking equitable relief to allow the merits of his case to finally be considered.

Whatever may have been the defects in Mr. Morse's *pro se* filings, the procedural errors since the filing of his Rule 60 petition are not the fault of Mr. Morse. Mr. Morse's untimely appeal was abandoned, and the good faith belief of counsel was that it would be dismissed in due course as futile. Counsel's advice to Mr. Morse from the beginning had been based on

the idea that the appeal was not only untimely, but unlikely to succeed; that is why counsel advised him to seek a reopening in the trial court instead of success in the appellate court. That is also why counsel filed no brief in the appellate court.

The trial court had the power to grant relief other than that requested by Mr. Morse, but the "relief" it granted was in substance no relief at all. As counsel had noted in advising him, his *pro se* amended complaint had not passed muster in the trial court and stood little chance of doing so on appeal. Instead, counsel sought to achieve trial on the merits by amending the complaint. Counsel did not explicitly ask for the appeal to be dismissed, and justice warrants Mr. Morse be given an opportunity to have his amended complaint proceed on the merits in the trial court. He should be given the chance to have his issues decided on their merits, now that they have been more clearly articulated as shown in Dkt. 81.

As counsel noted in Mr. Morse's Rule 60 motion, the courts of this circuit have often noted a strong legal presumption in favor of trial on the merits. *See Davis v. Carabo*, 50 F.R.D. 468, 469 (D.S.C. Oct. 30, 1970), *quoting Thorpe v. Thorpe*, 364 F.2d 692, 694 (D.C. Cir. 1966) ("The philosophy of modern federal procedure favors trial on the merits"); *Hall v. Jomar Logistics, Inc.*, No. 2:05-2823-

PMD, 2006 WL1889165 at *2 (D.S.C. July 7, 2006), *quoting* 10 Wright, Miler & Keene, *Federal Practice and Procedure* § 2681 (1983) ("There is a strong public policy, supported by concepts of fundamental fairness, in favor of trial on the merits"); *United States v. Wallis*, No. 6:14-CV-00005, 2015WL 13858921 at *2 (W.D. Va. Aug. 3, 2015) ("The law favors trial

on the merits"); *Small v. Ramsey*, No. 1:10CV121, 2010 WL 4394084 at *3 (N.D.W.Va. Nov. 1, 2010), *quoting McDaniel v. Romano*, 190 S.E.2d 8, 11 (W. Va. 1982) ("The policy of the law favors the trial of all cases on their merits").

In addition, as shown by Dkt. 81, Mr. Morse's action sought relief under the Uniformed Services Employment and Reemployment Rights Act (USERRA), a statute that was enacted to protect members of the Uniformed Services, and as such is broadly construed in their favor. *Harwood v. American Airlines*, 963 F.3d 408, 414 (4th Cir. 2020), *citing Francis v. Booz, Allen & Hamilton Inc.*, 452 F.3d 299, 303 (4th Cir. 2006). USERRA provides a "multi-tiered and comprehensive remedial scheme to ensure the employment and reemployment rights of those called upon to serve in the Armed Forces." *Francis*, 452 F.3d at 303, *citing Morris-Hayes v. Board of Education*, 423 F.3d 153, 160 (2d Cir. 2005). It would be in keeping with the remedial nature of USERRA to permit a USERRA claim to be heard and decided on its merits.

Mr. Morse's complaint has never been answered by the Virginia Department of Corrections, not a page of discovery has been exchanged, and his case has never taken a single step towards resolution on its merits, because he was not able to articulate his claims sufficiently to meet the trial court's standards, and because his counsel focused on a rule 60 motion with the trial court instead of obtaining appellate court relief, as it viewed appellate adjudication as hopeless due to the late notice. In fairness to Mr. Morse, this court should give him a chance to have the merits of his claim considered and determined.

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MR. MORSE'S PETITION FOR A REHEARING ON HIS WRIT PETITION (NOVEMBER 14, 2025)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

In re ROGER LEE MORSE

No. 25-1252

On Petition for a Writ of Extraordinary Relief to the United States Court of Appeals for the Fourth Circuit

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PETITION FOR REHEARING MR. MORSE'S PETITION FOR A WRIT OF EXTRAORDINARY RELIEF

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RELIEF SOUGHT

The petitioner, Roger Lee Morse, respectfully requests that this panel rehear his recently denied petition for extraordinary relief, in light of important

facts not addressed in this court's denial. In particular, the panel should consider this court's earlier decision to treat Mr. Morse's untimely notice of appeal as a request for extension of time based on excusable neglect, when Mr. Morse never requested an extension, never argued excusable neglect, and in fact emphatically rejected both strategies after obtaining counsel. The panel should consider whether the courts imposed on Mr. Morse a litigation strategy that he had himself rejected, and then, by granting an extraordinary writ, give him the chance to pursue his own strategy towards a decision of his case on its merits.

INTRODUCTION

The court's recent opinion (Dkt. 17) does not discuss any facts of the case. Its discussion of law is limited to 28 U.S.C. § 1651(a) and general principles of obtaining extraordinary writs, as described in *United States v. Swaby*, 855 F.3d 233, 238 (4th Cir. 2017) (a *coram nobis* case) and *In re Lockheed Martin Corp.*, 503 F.3d 351, 353 (4th Cir. 2007) (a mandamus case that turned on the availability of alternative remedies).

As far as counsel can tell, the court has overlooked all the facts, argument, and law in the original petition, or at least has not included any discussion to show what it did consider. In addition, this particular petition raises an issue of exceptional importance: whether the courts can impose a litigation strategy on the plaintiff (namely, to seek an extension of time for appeal on the basis of excusable neglect) after the plaintiff has emphatically rejected that strategy.

Reduced to their essence, the facts not discussed by the court are these:

Mr. Morse began his case *pro se*. The trial court dismissed it for failure to articulate his claims to the court's satisfaction. He filed his appeal untimely and *pro se*, but did not file a motion to reopen the appeal period in accordance with 28 U.S.C. § 2017(c). He then obtained counsel, who advised him to abandon his appeal and seek post-trial relief under Fed. R. Civ. P. 60. Counsel were not aware that briefs had been filed in the appeal, and have only recently learned that fact. Counsel believed that the untimeliness of the appeal deprived this court of all jurisdiction under *Bowles v. Russell*, 551 U.S. 205, 211-13 (2007), so that no further action was needed to abandon the appeal.

In the text of his Rule 60 petition, Mr. Morse, through counsel, specifically expressed his view that 28 U.S.C. § 2017(a) and *Bowles* deprived the appellate court of jurisdiction, and that he was therefore unable to avail himself of the appellate court; and that "more importantly" he believed his interests would be better served by seeking relief in the trial courts. In so doing, he demonstrated his intent to abandon his appeal, which he correctly believed this court had no jurisdiction over anyway.

After Mr. Morse showed his intent to abandon his appeal through his actions and through the text of his Rule 60 petition, this court and the trial court acted in conjunction to revive the appeal and deny it, first by "liberally construing" his notice of appeal as a motion to extend the appeal period, then by ruling that the extension he had never asked for was justified by excusable neglect.

In so doing, this court and the trial court supplied Mr. Morse with arguments that he had not made, namely, that his notice of appeal was really a motion

to extend and that the delay in filing his notice of appeal was "excusable" (Atts. 7-9). This *sua sponte*, court-supplied argument served only to revive a futile appeal over which this court lacked jurisdiction, and to deprive Mr. Morse of any chance to obtain the relief he actually *was* asking for, namely a reopening of his case in the trial court with a new opportunity to amend his complaint with the aid of counsel. It also imposed a litigation strategy on Mr. Morse other than the one he had chosen with the aid of counsel.

Because Mr. Morse never requested an extension nor argued for excusable delay, this court never had jurisdiction over his appeal. It would have done better to dismiss the appeal for lack of jurisdiction, and permit his Rule 60 petition in the trial court to proceed. That is why he is requesting extraordinary relief to reopen that appeal, dismiss it for lack of jurisdiction, and give him the opportunity to seek a determination of his case on its merits.

SUPPLEMENTAL FACTS

As noted in the original petition, Mr. Morse filed his original case *pro se* in the Eastern District of Virginia in March 2021. The merits of his case were never reached; for its entire two-year history, his *pro se* case was nothing but motions to dismiss, orders to amend, and efforts to amend that did not satisfy the trial court. The trial court dismissed the case on August 11, 2023 (Att. 1), and Mr. Morse filed a notice of appeal on October 4, 2023, more than 30 but less than 60 days after the court's order (Att. 2). This notice included no language requesting or attempting to justify an extension. In December 2023, Mr. Morse engaged counsel to assist him with his case.

After examining the trial court record, counsel noticed three things: (1) that the notice of appeal was untimely by 21 days, (2) that it was too late to file a request for extension, and (3) that the appeal itself had no realistic chance of success. Counsel's research had included 28 U.S.C. § 2107 and *Bowles v. Russell*, 551 U.S. 205, 211-13 (2007), convincing counsel that the appeal would be dismissed for lack of jurisdiction without the need for further effort in the appellate court. *See* Atts. 5-6. Furthermore, counsel believed that the posture of the case would not support an appeal, though relief might still be possible in the trial court, if that court was willing to entertain an amended complaint drafted with professional assistance. Counsel therefore advised Mr. Morse to abandon his appeal and pursue a Rule 60 petition in the trial court.

Unbeknownst to counsel, both the Government and Mr. Morse had already filed informal briefs in this court, before Mr. Morse had even approached counsel. (Atts. 3-4). Counsel never imagined that briefs would have been requested or filed in a case where the lack of jurisdiction was facially so obvious, and counsel did not file appearances in this court or review the record on appeal. Counsel expected the court to dismiss the appeal for lack of jurisdiction or for want of prosecution, as long as Mr. Morse filed nothing further. *See* Loc. Rule 45. Besides, counsel knew of no motion to extend the appeal period (in fact there were no such motions), it was too late to file any such motion, and the case file showed that the appeal was unlikely to be granted even if it could be rendered timely.

The Defendants' appellate brief raised lack of jurisdiction based on untimeliness. (Att. 3). Mr. Morse's

pro se appellate brief, which he filed in late November 2023, came too late to qualify as a request for extension under 28 U.S.C. § 2107(c). Furthermore, in this brief, Mr. Morse made no argument that the delay was excusable. He instead argued that the lack of any limitations period under USERRA applies to the notice of appeal. (Att. 4). The later idea that his delay was "excusable" was supplied *sua sponte* by the trial court and by this court. (Atts. 7-9).

Counsel now wish that they had advised Mr. Morse to file a specific withdrawal of the appeal instead of relying on the court's lack of jurisdiction, but believe that Mr. Morse should not lose his chance to assert the merits of his case based on this omission.

Counsel entered an appearance in the trial court rather than the appellate court, and filed the Rule 60 petition in January 2024. (Att. 5). The Rule 60 petition itself demonstrates Mr. Morse's intent to abandon his appeal and his position that the appellate court lacked jurisdiction to hear it. (Att. 5). Mr. Morse's reply in support of his Rule 60 petition makes the point more forcefully. (Att. 6).

ARGUMENT

Mr. Morse's manifest intent, once he obtained counsel, was to abandon his appeal and attempt to obtain relief in the trial court. Moreover, this court could only obtain jurisdiction over the untimely appeal if Mr. Morse requested it in keeping with 28 U.S.C. § 2107(c). As Mr. Morse never made such a request, this court should not have created such a request from his untimely notice of appeal, especially not when the result would so obviously be to his detriment.

Through counsel, Mr. Morse argued repeatedly that his concern was not to defend his prior, *pro se* appeal, but to amend his complaint and have his case heard on its merits. Thus, in his rule 60 petition, he explained

> However, Mr. Morse has now retained counsel, and learned that his Notice of Appeal was untimely under 21 U.S.C. § 2107(a), and that the Court's mistake in misstating the deadline cannot support his appeal under *Bowles v. Russell*, 551 U.S. 205, 211-13 (2007). After consultation with counsel, Mr. Moore believes his interests would be better served by reopening the case and, with the aid of counsel, filing a proper complaint that complies with the Court's requirements.

(Att. 5). Responding to a Defense argument that his appeal was "ripe for decision" in the appellate court, Mr. Morse again stated,

> As noted in the original Rule 60 motion, the plaintiff did not file his notice of appeal within the statutory thirty-day period, because he was relying on the court's own erroneous notice of a sixty-day deadline (Dkt. 68, Dkt. 70). Under the Supreme Court's ruling in *Bowles v. Russell*, 551 U.S. 205, 211-13 (2007), the District Court lacks authority to extend the statutory deadline, and the Fourth Circuit Court of Appeals lacks jurisdiction to hear Mr. Morse's appeal, even though it was based on a judicial mistake.

(Att. 6).

Before he made these arguments through counsel, Mr. Morse's *pro se* appellate brief addressed the Government's jurisdictional argument, but did not attempt to argue "excusable delay." Instead he attempted to argue that USERRA's lack of a statute of limitations applies to appeals as well as lawsuits. (Att. 4). This argument, of course, could not succeed. The "excusable delay" argument that the court supplied for Mr. Morse was futile for a different reason: because any appeal from the trial court's order would be too weak to enjoy any chance of success.

When the appellate court and the trial court conferred about the justifiability of his delay beyond 30 days, they were acting *sua sponte* rather than on Mr. Morse's own arguments—and they were doing so to his *detriment* rather than his benefit. It is well established that federal courts will allow some leeway to *pro se* litigants, preferring to let their cases be decided on the merits rather than forfeited because they lack legal education. *See Escobar-Salmeron v. Moyer*, 150 F.4th 360, 371 (4th Cir. 2025); *Donald v. Cook County Sheriff's Department*, 95 F.3d 548, 555 (7th Cir. 1996) (noting that this policy is designed "to permit the adjudication of *pro se* claims on the merits, rather than to order their dismissal on technical grounds); *Chandler v. Montaine*, No. 1:07-CV-251, 2008 WL 4642251 at *2 (D. Vt. Oct. 15, 2008) (likewise justifying this policy as permitting the *pro se* defendant's case to be decided on the merits). In this case, the trial and appellate courts did the opposite: they supplied an argument Mr. Morse had not made in order to hold him more strictly to the defects of his *pro se* pleadings, and in so doing ensured that the trial

court would never see the merits of his case in a form it could comprehend.

Normally an issue or an argument not made on appeal is considered abandoned. *Reaves v. Claim Regional Office*, 454 Fed. Appx. 217, 218 (4th Cir. 2011), *citing Edwards v. City of Goldsboro*, 178 F.3d 231, 241 n. 6 (4th Cir.1999). Normally a court will not *sua sponte* revive an abandoned argument, even when the appellant asks for it. *United States v. Furman*, 112 F.3d 435, 440 (10th Cir. 1997). In this case, the courts raised an issue and made the arguments for Mr. Morse, arguments he did not make himself and did not even want to make after he consulted with counsel.

To put it another way, Mr. Morse and his counsel considered two strategies: (1) attempting to revive the appeal, and (2) attempting to secure Rule 60 relief in the trial court. Mr. Morse, on counsel's advice, firmly rejected strategy (1) and pursued strategy (2). The trial and appellate courts acting together, then imposed strategy (1) on him, leading to the failure he expected from that strategy. It is the prerogative of each litigant to choose his own litigation strategy, with or without the assistance of counsel. *See K.P. v. District of Columbia*, No. 15-CV-1365, 2018 WL 6181737 at *3 & n.2 (D.C. Cir. Nov. 27, 2018) (noting that it was the plaintiffs' prerogative to choose their own strategy); *Lopez v. Stephens*, 783 F.3d 524, 527 (5th Cir. 2015) (noting that even a criminal defendant facing capital punishment has the right to decide his own strategy); *see also Jones v. Barnes*, 463 U.S. 745, 751-52 (1983) (affirming that counsel in appellate courts have the prerogative, indeed the duty, to choose which issues to advance and which ones to abandon). The courts

should not have chosen for Mr. Morse a litigation strategy that he had rejected.

Whether he succeeds or fails, in fairness, Mr. Morse should have the opportunity to convince the trial court to view and evaluate his case on the merits. Accordingly, he requests that the panel conduct a re-hearing of his petition, reopen and dismiss the appeal it previously denied (Att. 10), and instruct the U.S. District Court for the Eastern District of Virginia to consider Mr. Morse's Rule 60 petition on its merits.

Respectfully Submitted,

/s/ Sean C. Timmons
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stimmons@tullylegal.com

DISTRICT COURT DOCKET SHEET FOR
MORSE v. VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL.

Date Filed	#	Docket Text
3/12/2021	1	MOTION for Leave to Proceed in forma pauperis by Roger Lee Morse. (Attachments: # 1 Complaint (RECEIVED),# l Local Rule 83.1 Certification,# J. Unmarked Attachments) (asho,) (Entered: 03/14/2021)
3/29/2021	2	ORDER that the Court ORDERS Morse, no later than May 3, 2021, to file an in forma pauperis application or remit the filing fee for a civil action; a Ghostwriting Form; and an Amended Complaint. See Order for details. Signed by District Judge M. Hannah Lauck on 3/29/2021. Copy to Morse as directed with IFP and ghostwriting forms. (jsmi,) (Entered: 03/29/2021)
3/29/2021	3	COMPLAINT against All Defendants filed by Roger Lee Morse. (Attachments: # 1 Unmarked exhibits)

Date Filed	#	Docket Text
		Gsrni,) (Entered: 04/05/2021)
3/30/2021	4	Civil Filing Fee Paid: $ 402.00, receipt number 34683049986. (Mailed original receipt to Roger Morse) (lbre,) (Entered: 03/30/2021)
4/30/2021	5	Response to 2. Order filed by Roger Lee Morse. (Attachments:# 1 Local Rule 83.1 Certification) (jsmi,) (Entered: 04/30/2021)
4/30/2021	6	MOTION for Reconsideration by Roger Lee Morse. (Attachments: # 1 Attachments, # 2. Local Rule 83.1 Certification) Gsmi,) (Entered: 04/30/2021)
5/10/2021	7	ORDER that because Morse proceeds pro se and has now paid the filing fee for this civil action the Court will allow him to again amend his complaint no later than June 15, 2021. Because Morse has paid the filing fee, he must also submit proposed summonses before he may proceed with his action

Date Filed	#	Docket Text
		against Defendants. See Order for details. Signed by District Judge M. Hannah Lauck on 5/10/2021. Copy to Plaintiff as directed. jsmi,) (Entered: 05/10/2021)
6/10/2021	8	NOTICE of Appearance by JeRoyd Wiley Greene, ill on behalf of Roger Lee Morse (Greene, JeRoyd) (Entered: 06/10/2021)
6/10/2021	9	MOTION for Extension of Time to Amend. 6 MOTION for Reconsideration by Roger Lee Morse. (Greene, JeRoyd) (Entered: 06/10/2021)
6/10/2021	10	ORDER re: 2 Motion for Extension of Time to Amend; the Court GRANTS the Motion. Morse SHALL file his Amended Complaint no later than July 2, 2021. Signed by District Judge M. Hannah Lauck on 6/10/2021. Copy sent to Plaintiff as directed. (asho,) (Entered: 06/10/2021)

Date Filed	#	Docket Text
7/02/2021	11	Second MOTION for Extension of Time to Amend 10 Order on Motion for Extension of Time to Amend, by Roger Lee Morse. (Attachments: # 1 Exhibit)(Greene, JeRoyd) (Entered: 07/02/2021)
7/02/2021	12	ORDER re: 11 Motion for Extension of Time to Amend; The Court GRANTS the Motion. Morse SHALL file his Amended Complaint no later than July 14, 2021. SEE ORDER FOR DETAILS. Signed by District Judge M. Hannah Lauck on 7/2/2021. Copy sent to Plaintiff as directed. (asho,) (Entered: 07/02/2021)
7/13/2021	13	MOTION to Withdraw as Attorney by Roger Lee Morse. (Greene, JeRoyd) (Entered: 07/13/2021)
7/13/2021	14	MOTION FOR LEAVE OF COURT FOR EXTENSION OF TIME by Roger Lee Morse. (Greene, JeRoyd) Modified to correct docket text/ event on 7/14/2021

Date Filed	#	Docket Text
		(adun,). (Entered: 07/13/2021)
		Notice of Correction re 14 MOTION for Extension of Time. Clerk has corrected docket text and event. No further action is required. (adun,) (Entered: 07/14/2021)
7/14/2021	15	NOTICE This matter comes before the Court on Plaintiffs counsel JeRoyd W. Greene, III's Motion to Withdraw as Counsel of Record (the 'Motion"). (ECF No. 13.) The Court places Plaintiff Roger Lee Morse on notice that if the Court grants the Motion, Morse must proceed pro se unless he finds new counsel. Morse shall find substitute counsel no later than November 8, 2021. Substitute counsel shall file a motion to substitute counsel no later than November 8. If Morse is unable to find new counsel, or if his new counsel does not file a motion to substitute by November 8, he shall be transferred to

Date Filed	#	Docket Text
		prose status. Morse may still retain counsel if he finds new counsel after he has been transferred to pro se status. If at any time Morse retains counsel while he proceeds pro se, that counsel shall enter a notice of appearance. Signed by District Judge M. Hannah Lauck on 10/29/2021. Copy sent to Plaintiff as directed. (asho,) (Entered: 10/29/2021)
10/29/2021	16	Response to 15 Order; filed by Roger Lee Morse. (Attachments: # 1 Unmarked Attachment) (asho,) (Entered: 11/09/2021)
11/16/2021	17	ORDER the Court GRANTS both (1) the Motion to Withdraw as Counsel of Record, (ECF No. 11), and (2) the Motion for Leave of Court for Extension of Time, (ECF No. 14). The Court DIRECTS the Clerk to remove JeRoyd Wiley Greene, III as counsel of record for Morse. Morse

Date Filed	#	Docket Text
		will proceed pro se until he retains new counsel. Morse SHALL file his Amended Complaint no later than December 15, 2021. SEE ORDER FOR DETAILS. Signed by District Judge M. Hannah Lauck on 11/16/2021. Copy of his Order sent to JeRoyd Wiley Green, III and Roger Lee Morse. (asho,) (Entered: 11/16/2021)
11/19/2021	18	ORDER This matter comes before the Court on Plaintiff Roger Lee Morse's prose Motion for Leave to Proceed in Forma Pauperis. (ECF No. 1.) Morse has now paid the filing fee. (ECF No. 4.) The Clerk has docketed Morse's Complaint. (ECF No. 3; see ECF No. 7.) Accordingly, the Court DENIES Morse's Motion to Proceed in Form a Pauperis as MOOT. (ECF No. 1.). Signed by District Judge M. Hannah Lauck on 11/19/2021. Copy of Order sent to Morse as directed (asho,) (Entered: 11/19/2021)

Date Filed	#	Docket Text
11/19/2021	19	ORDER re 6 Motion for Reconsideration; Morse appears to request that the Court reconsider actions of this Court in other cases. If Morse wishes to have the Court reconsider a ruling in another case, he must file a motion in that case. Morse "may not use a Rule 60 motion to re-litigate the merits of a matter previously decided by the Court." Accordingly, the Court DENIES Morse's Motion for Reconsideration. (ECF No. 6) SEE ORDER FOR DETAILS. Signed by District Judge M. Hannah Lauck on 11/19/2021.Copy of Order sent to Morse as directed. (asho,) (Entered: 11/19/2021)
11/23/2021	20	MOTION for Review and to Rescind Order by Roger Lee Morse. (Attachments: # l Unmarked Attachment)(asho,) (Entered: 11/23/2021)
12/15/2021	21	AMENDED COMPLAINT, filed by Roger Lee Morse.

Date Filed	#	Docket Text
		(asho,) (Entered: 12/15/2021)
05/18/2022	22	ORDER This matter comes before the Court on Plaintiff Roger Lee Morses Motion for Review and to Rescind Order by Counsel to Court on Request to Withdraw as Counsel. (ECF No. 20.) As the Court stated in its previous Order entered on November 18, 2021, a litigant may not use a Rule 60 motion to re-litigate the merits of a matter previously decided by the Court. (ECF No. 19, at 2.) The Court also stated that if Morse wishes to have the Court reconsider a ruling in another case, he must file a motion in that case. The Court reiterates that Morse is not entitled to counsel in this case. The Court DENIES Morse's Motion for Review and to Rescind Order by Counsel to Court on Request to Withdraw as Counsel. (ECF No. 2Q.) SEE ORDER FOR DETAILS.

Date Filed	#	Docket Text
		Signed by District Judge M. Hannah Lauck on 5/18/2022. A copy of this Order sent to pro se Plaintiff. (asho,) (Entered: 05/18/2022)
06/21/2022	23	MOTION for Reappointment of Counsel by Roger Lee Morse. (Attachments: # 1 Local Rule 83.1 Certification)(asho,) (Entered: 06/21/2022)
11/07/2022	24	ORDER-This matter comes before the Court on Plaintiff Morse's Motion for Reappointment of Counsel (the "Motion"). (ECF No. 23.) On November 23, 2021, Morse filed a Motion for Review and to Rescind Order, (ECF No. 20), that requested the Court rescind its November 16, 2021 Order allowing Morse's counsel to withdraw, (ECF No. 17). On May 18, 2022, the Court denied Morse's Motion for Review and to Rescind Order, (ECF No. 20), and reiterated that Morse is not entitled to

Date Filed	#	Docket Text
		counsel in this case, Civil Action No. 3:21cv168 ("Morse II'), (ECF No. 22). Morse is not entitled to Court appointed counsel in either case. Of course, as always, Morse may proceed in this case pro se or with a retained lawyer. the Court DENIES the Motion. (ECF No. 23.) Morse is appropriately proceeding pro se currently and the Court DIRECTS the Clerk to issue summonses in this matter. SEE ORDER FOR DETAILS. Signed by District Judge M. Hannah Lauck on 11/7/2022. (Copy mailed to plaintiff) (smej,) (Entered: 11/07/2022)
11/08/2022	25	Summons Issued as to Patricia S. Bishop, Beth Cabell, Kevin Clark, Harold Clarke, Tony Darden, Christopher M. Grab, Eric D. Greene, Sigrid Hancock, Gregory Hollaway, Robin H. Low, Williams Muse, Geoffrey O'Neill, Tracy Ray, Carl W. Schnidt, Joseph Walters. (Summons mailed to the

Date Filed	#	Docket Text
		Plaintiff with a copy of Rule 4 and instructions on serving the defendants) (smej,) (Additional attachment(s) added on 11/8/2022: # 1 Letter from the Clerk) (smej,). (Entered: 11/08/2022)
11/23/2022	26	Response to 24 Order, filed by Roger Lee Morse. (smej,) (Entered: 11/25/2022)
11/23/2022	27	MOTION to "Add Case No. 3:0lcv337 to This Case" by Roger Lee Morse. (smej,) (Entered: 11/25/2022)
11/29/2022	28	ORDER that the Court DENIES Plaintiff Morse's 27 Motion to Add Case No. 3:01cv337 to This Case. Morse will continue to proceed pro se only in Morse II unless he engages counsel other than Greene. Signed by District Judge M. Hannah Lauck on 11/29/2022. Copy of Order mailed to Morse. Gsmi,) (Entered: 11/29/2022)
11/29/2022	29	Summons Issued as to Tracy Beverley, Virginia Department of Corrections. Plaintiff to pick up

Date Filed	#	Docket Text
		summonses with instructions on serving. (asho,) (Entered: 11/29/2022)
01/24/2023	30	MOTION to Dismiss for Failure to State a Claim, *Lack of Jurisdiction, and Improper Form of Pleadings* with Roseboro,. by Patricia S. Bishop, Robin H. Low. (Myers, Elizabeth) (Entered: 01/24/2023)
01/24/2023	31	Memorandum in Support re 30 MOTION to Dismiss for Failure to State a Claim, *Lack of Jurisdiction, and Improper Form of Pleadings* with Roseboro,. filed by Patricia S. Bishop, Robin H. Low. (Myers, Elizabeth) (Entered: 01/24/2023)
01/25/2023	32	MOTION to Dismiss for Failure to State a Claim, *Lack of Subject Matter Jurisdiction and Failure to Comply with Rule 8, 10 and this Court's Order(s)* with Roseboro, by Christopher M. Grab, Carl W. Schnidt. (Regnery,

Date Filed	#	Docket Text
		Ronald) (Entered: 01/25/2023)
01/25/2023	33	Memorandum in Support re 32 MOTION to Dismiss for Failure to State a Claim, *Lack of Subject Matter Jurisdiction and Failure to Comply with Rule 8, 10 and this Court's Order(s)* with Roseboro,. filed by Christopher M. Grab, Carl W. Schnidt. (Attachments: # 1 Exhibit A, # 2. Exhibit B, # 1 Exhibit C)(Regnery, Ronald) (Entered: 01/25/2023)
01/25/2023	34	MOTION to Dismiss for Failure to State a Claim with Roseboro,., MOTION to Dismiss for Lack of Jurisdiction *and pursuant to Rule 12(b)(2-5), Rule 8, Rule JO and this Court's Order(s)* with Roseboro,. by Williams Muse. (Regnery, Ronald) (Entered: 01/25/2023)
01/25/2023	35	Memorandum in Support re 34 MOTION to Dismiss for Failure to State a Claim with Roseboro,. MOTION to Dismiss for

Date Filed	#	Docket Text
		Lack of Jurisdiction *and pursuant to Rule 12(b)(2-5), Rule 8, Rule 10 and this Court's Order(s)* with Roseboro,. filed by Williams Muse. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 1 Exhibit C)(Regnery, Ronald) (Entered: 01/25/2023)
01/26/2023	36	MOTION to Dismiss for Failure to State a Claim with Roseboro,., MOTION to Dismiss for Lack of Jurisdiction *and pursuant to Rule 8, Rule 10 and this Court's Order(s)* with Roseboro,. by Beth Cabell, Kevin Clark, Harold Clarke, Tony Darden, Virginia Department of Corrections, Joseph Walters. (Regnery, Ronald) (Entered: 01/26/2023)
01/26/2023	37	Memorandum in Support re 36 MOTION to Dismiss for Failure to State a Claim with Roseboro,. MOTION to Dismiss for Lack of Jurisdiction *and pursuant to Rule 8, Rule 10 and this Court's Order(s)*

Date Filed	#	Docket Text
		with Roseboro,. filed by Beth Cabell, Kevin Clark, Harold Clarke, Tony Darden, Virginia Department of Corrections, Joseph Walters. (Attachments:#1 Exhibit A, # 2. Exhibit B, # 1 Exhibit C)(Regnery, Ronald) (Entered: 01/26/2023)
01/30/2023	38	SUMMONS Returned Executed by Roger Lee Morse Patricia S. Bishop served on 1/4/2023, answer due 1/25/2023; Beth Cabell served on 1/6/2023, answer due 1/27/2023; Kevin Clark served on 1/6/2023, answer due 1/27/2023; Harold Clarke served on 1/5/2023, answer due 1/26/2023; Tony Darden served on 1/6/2023, answer due 1/27/2023; Christopher M. Grab served on 1/4/2023, answer due 1/25/2023; Robin H. Low served on 1/4/2023, answer due 1/25/2023; Williams Muse served on 1/4/2023, answer due 1/25/2023; Carl W. Schnidt served on 1/4/2023, answer due 1/25/2023;

Date Filed	#	Docket Text
		Joseph Walters served on 1/5/2023, answer due 1/26/2023. (jenjones,) (Entered: 01/30/2023)
01/30/2023	39	Summons Returned Unexecuted by Roger Lee Morse as to Tracy Beverley, Eric D. Greene, Sigrid Hancock, Gregory Hollaway, Geoffrey O'Neill, Tracy Ray, Virginia Department of Corrections. (jenjones,) (Entered: 01/30/2023)
02/16/2023	40	PLAINTIFF REQUEST FOR MOTION FOR EXTENSION OF TIME ON FILING RESPONSE ON DEFENDANTS' MEMORANDUMS No. 32, 33, 34 and 35 IN SUPPORT OF VDOC MOTION TO DISMISS, WITH PREJUDICE ON PLAINTIFF AMENDED COMPLAINT by Roger Lee Morse. (jsmi,) (Entered: 02/17/2023)
02/16/2023	41	PLAINTIFF'S RESPONSE TO DEFENDANT'S 36 MOTION TO DISMISS WITH PREJUDICE WITH MEMORANDUM IN

Date Filed	#	Docket Text
		SUPPORT ON PLAINTIFF'S AMENDED COMPLAINT filed by Roger Lee Morse. (jsmi,) (Entered: 02/17/2023)
02/16/2023	42	PLAINTIFF'S MEMORANDUM RESPONSE TO DEFENDANT'S MOTION TO DISMISS WITH PREJUDICE ON DOCUMENT NO. 37 ON MEMORANDUM IN SUPPORT ON PLAINTIFF'S AMENDED COMPLAINT filed by Roger Lee Morse. (Attachments:# 1 Attachment) (jsmi,) (Entered: 02/17/2023)
02/22/2023	43	ORDER that the Court GRANTS Defendant Roger Lee Morse's ~ Motion for Extension of Time. The Court GRANTS Morse an extension to file his Responses to the Defendants' 30, 32, and 34 Motions to Dismiss. Morse SHALL file his Responses no later than April 1, 2023. However, the Court notes that Morse's Responses

Date Filed	#	Docket Text
		must stand or fall of their own accord. Morse may not reference the exhibits from his Original Complaint in his Response. Signed by District Judge M. Hannah Lauck on 2/22/2023. Copy of Order mailed to Morse as directed. (jsmi,) (Entered: 02/22/2023)
02/23/2023	44	REPLY to Response re 36 MOTION to Dismiss filed by Beth Cabell, Kevin Clark, Harold Clarke, Tony Darden, Virginia Department of Corrections, Joseph Walters. (Regnery, Ronald) Modified docket text on 2/28/2023 (adun,). (Entered: 02/23/2023)
03/21/2023	45	Plaintiff's RESPONSE to Defendants' of Law in Support ofVDOC Defendant's Motion to Dismiss Document No. 44 filed by Roger Lee Morse. (jsmi,) (Entered: 03/22/2023)
03/27/2023	46	MOTION to Strike 45 Response to Motion by Beth Cabell, Kevin Clark, Harold Clarke, Tony Darden, Virginia

Date Filed	#	Docket Text
		Department of Corrections, Joseph Walters. (Phillips, Gordon) (Entered: 03/27/2023)
03/27/2023	47	Brief in Support to 46 MOTION to Strike 45 Response to Motion filed by Beth Cabell, Kevin Clark, Harold Clarke, Tony Darden, Virginia Department of Corrections, Joseph Walters. (Phillips, Gordon) (Entered: 03/27/2023)
03/28/2023		Notice of Correction re 46 MOTION to Strike and 47 Brief in Support. Per Chapter 3 of the E-Filing Polices and Procedures Manual, the filing attorney is reminded to file future documents with an. electronic signature unless directed otherwise from the Court. No further action is required. Gsmi,) (Entered: 03/28/2023)
04/04/2023	48	Plaintiff's Memorandum Response to JQ VRS Defendant's Motion to Dismiss with Prejudice on Memorandum in Support on Plaintiff's Amended

Date Filed	#	Docket Text
		Complaint by Roger Lee Morse. (Attachments: # 1 Cover, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5. Exhibit D, # .6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G, # 9. Rule 83.1 certification)(adun,) (Entered: 04/04/2023)
04/04/2023	49	Plaintiff's Memorandum Response to DHRM Defendant's Motion to Dismiss with Prejudice on Document no. 32 and 33 on Memorandum in Support on Plaintiff's Amended Complaint filed by Roger Lee Morse. (Attachments: # 1 Cover, # 2 Exhibit A, # .3. Local Rule 83.1 Certification)(adun,) (Entered: 04/04/2023)
04/04/2023	50	Plaintiff's Memorandum Response to DHRM Defendant's Motion to Dismiss with Prejudice on Document No. 34, and 35 on Memorandum in Support on Plaintiff's Amended Complaint filed by Roger Lee Morse. (Attachments: # l Cover, # 2 Exhibit A, # 3. Local Rule

Date Filed	#	Docket Text
		83.1 Certification)(adun,) (Entered: 04/04/2023)
04/05/2023	51	ORDER that the Court DENIES Defendants Virginia Department of Corrections, Harold Clarke, Joseph Walters, Beth Cabell, Tony Darden, and Kevin Clark's 46 Motion to Strike Plaintiff's Sur-Reply and will not strike the Sur- Reply. However, the Court ADVISES Morse that sur-replies are generally disfavored and, if he seeks to file one that he is required by Local Rules for the Eastern District of Virginia 7(F)(l) to request leave of the court to do so. See Order for details. Signed by District Judge M. Hannah Lauck on 4/5/2023. Copy mailed to Morse as directed. (jsmi,) (Entered: 04/05/2023)
04/10/2023	52	REPLY in Support re 32 MOTION to Dismiss for Failure to State a Claim, *Lack of Subject Matter Jurisdiction and Failure to Comply with Rule 8, 10*

Date Filed	#	Docket Text
		and this Court's Order(s) with Roseboro,. filed by Christopher M. Grab, Carl W. Schnidt. (Attachments: # 1 Exhibit A) (Regnery, Ronald) (Entered: 04/10/2023)
04/10/2023	53	REPLY in Support re 34 MOTION to Dismiss for Failure to State a Claim with Roseboro,. MOTION to Dismiss for Lack of Jurisdiction *and pursuant to Rule 12(b)(2-5), Rule 8, Rule 10 and this Court's Order(s)* with Roseboro,. filed by Williams Muse. (Regnery, Ronald) (Entered: 04/10/2023)

Date Filed	#	Docket Text
05/01/2023	54	Plaintiff's Motion of REPLY to DHRM Defendant's Motion of Reply to Dismiss with Prejudice Document No. 32 and 33 With Prejudice on Plaintiff's Amended Complaint filed by Roger Lee Morse. (Attachments:# 1 Exhibit A, # 2 ExhibitA-1, # 3. Exhibit 1, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5, # 7 Exhibit 6, # 8 Exhibit 7, # 9. Local Rule 83.l(M) Certification) (jsm.i,)). Modified on 5/2/2023 (jsmi,) (Entered: 05/02/2023)
05/01/2023	55	Plaintiff's MOTION to the Court to Respond to Document No. 52 and 53 for DHRM Defendant's Motion to Dismiss Plaintiff's Amended Complaint and Last Filing of Plaintiff's Response Motion by Roger Lee Morse. (Attachments:# 1 Local Rule 83.(M)) Certification) (jsm.i,) (Entered: 05/02/2023)
05/01/2023	56	Plaintiff's Responding to DHRM Defendant's 53

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		Motion to Dismiss Plaintiff's Amended Complaint filed by Roger Lee Morse. (Attachments:# 1 Local Rule 83.1 Certification) (jsm.i,) (Entered: 05/02/2023)
05/01/2023	57	Memorandum in Opposition re – MOTION *by Plaintiff to Respond to Document No. 52 and 53* filed by Christopher M. Grab, Carl W. Schnidt. (Regnery, Ronald) (Entered: 05/15/2023)
05/15/2023	58	Memorandum in Opposition re *55* MOTION *by Plaintiff to Respond to Document No. 52 and 53* filed by Williams Muse. (Regnery, Ronald) (Entered: 05/15/2023)
05/15/2023	59	MEMORANDUM ORDER that Defendants' 30, 32, 34, and 36 Motions to Dismiss are GRANTED and Morse's 55 Motion for Sur-replies is DENIED. In deference to Morse's pro se status, the Court DISMISSES Morse's Amended Complaint without prejudice, and

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		GRANTS Morse leave to file a Second Amended Complaint. If Morse chooses to do so, the Second Amended Complaint must be filed within twenty-one days of the date of entry of this Order, and must comply with all requirements set forth herein. Morse is ADVISED THAT HIS ACTION WILL BE DISMISSED WITH PREJUDICE if he fails to file a Second Amended Complaint that strictly complies with the terms of this Order. See Order for details. Signed by District Judge M. Hannah Lauck on 5/24/2023. Copy to Morse as directed. Gsmi,) (Entered: 05/24/2023)
05/24/2023	60	Mail sent to Roger Lee Morse returned to sender. (j smi,) (Entered: 06/06/2023)
07/03/2023	61	LETTER MOTION for Continuance by Roger Lee Morse. (Attachments: # 1 Exhibit, # 2 Local

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		Rule83.l(M)) Gpow,) (Entered: 07/05/2023)
07/07/2023	62	ORDER Upon due consideration, and for good cause shown, the Court GRANTS the Motion (ECF 61). Morse SHALL file his Second Amended Complaint no later than August 7, 2023. This request comes nineteen (19) days beyond the June 14, 2023, deadline. Morse is ADVISED THAT HIS ACTION WILL BE DISMISSED WITH PREJUDICE if he fails to file a Second Amended Complaint by that time. Additional requests for extension of time will be looked upon with disfavor. Signed by District Judge M. Hannah Lauck on 7/7/2023. (Kat) (Copy provided to Mr. Morse, as directed.) (Entered: 07/07/2023)
07/26/2023	63	MOTION to Withdraw as Attorney by Tracy Beverley, Patricia S. Bishop, Beth Cabell, Kevin Clark, Harold Clarke, Tony

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		Darden, Christopher M. Grab, Eric D. Greene, Sigrid Hancock, Gregory Hollaway, Robin H. Low, Williams Muse, Geoffrey O'Neill, Tracy Ray, Carl W. Schnidt, Virginia Department of Corrections, Joseph Walters. (Attachments: # 1 Proposed Order)(Phillips, Gordon) (Entered: 07/26/2023)
07/28/2023	64	ORDER granting 63 Motion to Withdraw as Counsel. Attorney Gordon Murphy Phillips terminated. Signed by District Judge M. Hannah Lauck on 7/28/2023. (Kat) (Mr. Phillips removed from CM/ECF service list, as directed.) (Entered: 07/28/2023)
08/08/2023	65	SECOND AMENDED COMPLAINT against Patricia S. Bishop, Beth Cabell, Kevin Clark, Harold Clarke, Tony Darden, Christopher M. Grab, Robin H. Low, Williams Muse, Carl W. Schnidt, Virginia

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		Department of Corrections, Joseph Walters filed by Roger Lee Morse. (Attachments: # l Exhibit)(Kat) (Entered: 08/09/2023)
08/08/2023	66	MOTION to Request for Legal Representation from the Virginia Attorney General as Mandated by the Virginia General Assembly Under Virginia Code 44-93(a)(b) and 44-93.5 to Enforce USSERA Law Under Federal Statue 38 U.S.C. 4301-4335 by Roger Lee Morse. (Kat) (Entered: 08/09/2023)
08/11/2023	67	MEMORANDUM OPINION. Signed by District Judge M. Hannah Lauck on 8/11/2023. (Kat) (Entered: 08/11/2023)
08/11/2023	68	FINAL ORDER In accordance with the accompanying Memorandum Opinion, it is ORDERED that the action is DISMISSED WITH PREJUDICE. The Clerk is DIRECTED to enter a final appealable Judgment in a Civil Case

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		in favor of Defendants as a separate entry on the docket. Signed by District Judge M. Hannah Lauck on 8/11/2023. (Kat) (Copies of Memorandum Opinion and Final Order sent to Mr. Morse, as directed.) (Entered: 08/11/2023)
08/11/2023	69	CLERK'S JUDGMENT The action is DISMISSED WITH PREJUDICE. Judgment is hereby entered in favor of Defendants. Signed by Clerk on 8/11/2023. (Kat) (Copy sent to Mr. Morse.) (Entered: 08/11/2023)
10/02/2023	70	NOTICE OF APPEAL by Roger Lee Morse. (Kat) (Entered: 10/03/2023)
10/02/2023	71	MOTION for Leave to Appeal in forma pauperis by Roger Lee Morse. (Kat) (Entered: 10/03/2023)
10/02/2023		Motion to Appeal in Forma Pauperis Transmitted to 4CCA re 71 (Kat) (Entered: 10/03/2023)
10/04/2023	72	Transmission of Notice of Appeal to US Court of Appeals re 70 Notice of Appeal (All case opening

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		forms, plus the transcript guidelines, may be obtained from the Fourth Circuit's website at www.ca4.uscourts.gov) (smej,) (Entered: 10/04/2023)
10/05/2023		USCA Case Number 23-2039, Case Manager T. Barton, for 1Q Notice of Appeal filed by Roger Lee Morse. (smej,) (Entered: 10/05/2023)
10/05/2023		Assembled INITIAL Electronic Record Transmitted to 4CCA re 70 Notice of Appeal (smej,) (Entered: 10/05/2023)
01/14/2024	73	First MOTION to Reopen Case by Roger Lee Morse. (Branch, Pamela) (Entered: 01/14/2024)
01/26/2024	74	Memorandum in Opposition re 73 First MOTION to Reopen Case filed by Patricia S. Bishop, Beth Cabell, Kevin Clark, Chadwick Dotson, Tony Darden, Christopher M. Grab, Robin H. Low, Williams Muse, Carl W. Schnidt, Virginia Department of Corrections,

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		and Joseph Walters. (Myers, Elizabeth) Modified to correct filing parties on 1/29/2024 Gsmi,). (Entered: 01/26/2024)
02/02/2024	75	Reply to Defendant's Brief in Opposition to Plaintiff's Motion for Relief from Dismissal with Prejudice filed by Roger Lee Morse. (Branch, Pamela} (Entered: 02/02/2024)
02/26/2024	76	Opinion of USCA re 70 Notice of Appeal: REMANDED by unpublished per curiam opinion. (23-2039) (Lgar,) (Entered: 02/26/2024)
03/13/2024	77	USCA Appeal Notice re 70 Notice of Appeal: DISTRICT COURT FOLLOW-UP NOTICE FROM USCA. (See Notice for Details) (23-2039) (Lgar,) (Entered: 03/13/2024)
04/10/2024	78	USCA Appeal Notice re 70 Notice of Appeal: DISTRICT COURT FOLLOW-UP NOTICE FROM USCA. (See Notice for Details) (23-2039)

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		(Lgar,) (Entered: 04/10/2024)
05/01/2024	79	MEMORANDUM OPINION. Signed by District Judge M. Hannah Lauck on 4/30/2024. (jenjones,) (Entered: 05/01/2024)
05/01/2024	80	ORDER that for the reasons stated in the accompanying Memorandum Opinion, the Court finds that Mr. Morse has established excusable neglect warranting an extension of the 30-day appeal period. Mr. Morse's October 2, 2023 Notice of Appeal, (ECF No. 70), is DEEMED TIMELY. Mr. Morse's Motion for Relief from Dismissal with Prejudice Under FRCP 60(b)(l) and 60(b)(6) is DENIED AS MOOT. (ECF No. 73.). It is SO ORDERED. Signed by District Judge M. Hannah Lauck on 4/30/2024. Copy of Memorandum Opinion and Order mailed to Mr. Morse as directed and to US Court of Appeals for

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		the Fourth Circuit. (jenjones,) (Entered: 05/01/2024)
05/01/2024		Assembled SUPPLEMENTAL Electronic Record Transmitted to 4CCA (23-2039) (Lgar,) (Entered: 05/02/2024)
09/12/2024	81	DEEMED AS MOOT PER ORDER ECF 83 AMENDED COMPLAINT against Virginia Department of Corrections, filed by Roger Lee Morse. (Attachment: # 1 Civil Cover Sheet)(Branch, Pamela). Modified on 9/25/2024. (sbea) (Entered: 09/12/2024)
09/12/2024	82	Proposed Summons by Roger Lee Morse (Branch, Pamela) (Entered: 09/12/2024)
09/23/2024	83	ORDER – Mr. Morse's counsel is ADVISED that filing an Amended Complaint at this juncture is procedurally improper, as this Court lacks jurisdiction to consider the Amended Complaint during the pendency of Mr.

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		Morse's appeal. Because "a federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously," Griggs, 459 U.S. at 58, this Court will not consider the Amended Complaint, and DEEMS the Amended Complaint MOOT. (ECF No.[81].) It is so ORDERED. SEE ORDER FOR DETAILS. Signed by District Judge M. Hannah Lauck on 9/23/2024. (ewat,) (Entered: 09/23/2024)
10/22/2024	84	Opinion of re 70 Notice of Appeal: Affirmed by unpublished per curiam opinion. (See Opinion for Details). (23-2039) (Lgar,) (Entered: 10/22/2024)
10/22/2024	85	USCA JUDGMENT as to 1Q. Notice of Appeal filed by Roger Lee Morse: 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

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		accordance with Fed. R. App. P. 41. (23-2039) (Lgar,) (Entered: 10/22/2024)
11/08/2024	86	Proposed Summons *Refiled Post USCA Decision* by Roger Lee Morse Associated Cases: 3 :2l-cv-00168-MHL, 3:01-cv-0033 7-DGL, 3: 13-cv-00361-REP(Branch, Pamela) (Entered: 11/08/2024)
11/12/2024		Notice of Correction re 86-Case is closed. Summons cannot be issued without Leave of Court. (adun,) (Entered: 11/12/2024)
11/13/2024	87	USCA Mandate re 70 Notice of Appeal: The judgment of this court, entered October 22, 2024, takes effect today. This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure. (23-2039) (Lgar,) (Entered: 11/13/2024)
12/10/2024	88	First MOTION for Leave to File Third Amended Complaint by Roger Lee Morse. (Attachments:# l

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		Supplement)(Branch, Pamela) (Entered: 12/10/2024)
12/11/2024	89	ORDER-This matter comes before the Court on Plaintiff Roger Lee Morse's Motion for Leave to File Third Amended Complaint (the "Motion11). (ECF No 88.) On August 11,2023, this Court dismissed Plaintiff Roger Lee Morse's Second Amended Complaint with prejudice. (ECF Nos. 67, 68). On October 2, 2023, in response to this ruling, Mr. Morse filed a Notice of Appeal with the United States Court of Appeals for the Fourth Circuit. (ECF No. 70 .) Over three months later, on January 14, 2024, Mr. Morse filed a Motion for Relief from Dismissal with Prejudice Under FRCP 60(b)(l) and 60(b)(6) (the Motion to Reopen). (ECF No. 73 .) To summarize, this Court dismissed this action with prejudice, (ECF No. 67, at 3), Mr. Morse appealed

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		that decision, (ECF No. 70, at 1), and the Fourth Circuit affirmed this Court's dismissal, (ECF No. 85). As a result, the Court DENIES the Motion. (ECF No. 88.) Mr. Morse and his counsel are ADVISED that further filings in this case are procedurally improper. It is SO ORDERED. SEE ORDER FOR DETAILS. Signed by District Judge M. Hannah Lauck on 12/11/2024. (ewat,) (Entered: 12/11/2024)