UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

MELISSA HOUGLIN, Plaintiff, v. CLARK COUNTY, INDIANA, DANNY RODDEN, in his individual and official capacity as Clark County Sheriff, JAMEY NOEL, in his official capacity as Clark County Sheriff, and OFFICERS JOHN/ JANE DOE, individually, Defendants.	)	CAUSE NO. 1:16-CV-1331-WTL-TAB

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

This case is before the Court on the complaint of plaintiff, Melissa Houglin. The complaint purports to be brought pursuant to 42 U.S.C. § 1983 and alleges that her rights under the Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments were violated by the defendants during her four (4) day incarceration in the Clark County Jail during August 2014. Named as defendants are Clark County, Indiana, former sheriff Danny Rodden, in his individual and official capacities, current Sheriff Jamey Noel, in his individual and official capacities, and an unknown number of "Officers John/Jane Doe" in their individual capacities.[1]

Defendants Clark County, Rodden and Noel, in their individual and official capacities, now move for dismissal of all claims against them.

[1] The Seventh Circuit has noted that the naming of "John Doe" defendants serves no purpose and practically will not permit bringing on any additional individual defendants in the future. *See, Wudtke v. Davel*, 128 F.3d 1056, 1060 (7th Cir. 1991); *Quick v. Madison Co. Sheriff's Dept.*, 2005 W.L. 4882773 at * 2 (S.D. Ind. 2005).

Relevant Facts as Pled

Plaintiff Melissa Houglin was arrested by Jeffersonville Police and transported to the Clark County Jail during the late evening hours of August 11, 2014 (Complaint, ¶¶ 16, 17). Upon her arrival at the jail, she was placed in the drunk tank (Complaint, ¶ 18).

The following morning, Houglin began her menstrual cycle (Complaint, ¶ 19). She requested a feminine hygiene product of any kind from unknown correctional officers but her requests were ignored (Complaint, ¶¶ 20, 21, 22, 23). Eventually another prisoner provided Houghlin with a tampon (Complaint, ¶ 24). While in the drunk tank, she was not provided with a mat to sleep on, shoes or adequate feminine hygiene products (Complaint, ¶ 25). Staff did not supply Houghlin with a tampon until she had been incarcerated for approximately 24 hours (Complaint, ¶ 26).

Plaintiff had been heavily menstruating and had bled through her underwear and jean shorts, and onto the floor where she slept (Complaint, ¶¶ 27, 28). Another prisoner provided Houghlin with a towel which she wrapped around herself after removing her blood-soaked clothing (Complaint, ¶¶ 29, 30). Correctional Officer Lee (who is not a defendant) noticed plaintiff wrapped in a towel and brought her a jumpsuit and sanitary napkin (Complaint, ¶¶ 31, 32). No underwear was provided and Houghlin was forced to put her own bloody underwear back on to use the sanitary napkin (Complaint, ¶¶ 33, 34). The sanitary napkin failed and Houghlin again bled through her clothing (Complaint, ¶ 35). Houghlin was not permitted to shower while in the drunk tank (Complaint, ¶ 36). An unknown psychologist came to the drunk tank, was disgusted by its condition and told staff to clean it up (Complaint, ¶ 37). During her menstrual cycle the jail provided Houghlin with three sanitary napkins and one tampon

(Complaint, ¶ 39). Houghlin was transported to the courthouse on August 15, 2014, in her bloodstained jumpsuit (Complaint, ¶ 41).

The Clark County Jail houses men and women, both pretrial and sentenced (Complaint, ¶ 48). The jail was built in 1991 and renovated in 2007 (Complaint, ¶ 49). The jail was designed to house 482 prisoners and between April 2012 and May 2015, there were never fewer than 449 prisoners or fewer than 80 female prisoners (Complaint, ¶¶ 50, 51). When prisoners are booked into the jail they are housed in holding tanks designed to temporarily hold prisoners until they are assigned a cell or taken to court (Complaint, ¶ 52). The drunk tank in which Houghlin was housed measured 10 feet by 12 feet (Complaint, ¶ 53). At some point there were 10 to 12 women held in the drunk tank in addition to Houghlin (Complaint, ¶ 54). During the time Houghlin was in the drunk tank, there were not enough beds or mats for all of the women and they had to sleep on concrete benches or on the floor (Complaint, ¶ 55).

Standard for a Motion to Dismiss

A motion to dismiss pursuant to Rule 12(b)(6) generally tests the sufficiency of the complaint. For purposes of the motion, all well-pleaded, non-conclusory, factual allegations are presumed to be true and are viewed in the light most favorable to the plaintiff. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). However, the court is not required to accept as true those legal conclusions couched as factual assertions. *Id.*

Under Rule 8(a), any pleading stating a claim for relief is required to include a "short plain statement of the claim showing that the pleader is entitled to relief." Fed. Rule Civ. P. 8(a). Rule 8(a)(2) requires that the factual allegations must be enough to raise a plaintiff's right to relief beyond the speculative level and the complaint must allege enough facts to show that the claim for relief is plausible. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007).

Where "the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged but it has not 'show[n]' 'that the pleader is entitled to relief." *Iqbal*, 556 U.S. at 679. Underlying the Supreme Court's decision in *Twombly* are two working principles: (1) conclusory statements and legal conclusions – as opposed to factual allegations – need not be accepted as true; and (2) only a plausible claim for relief may survive a motion to dismiss under Rule 12(b)(6). *Iqbal*, 556 U.S. at 679.

Under *Twombly* and *Iqbal* there is a two-pronged approach suggested for reviewing the sufficiency of a pleading. *Iqbal*, 556 U.S. at 678. The first step is to identify those factual allegations in the complaint which are entitled to an assumption of truthfulness. *Id.* The court must accept only "well-pleaded, non-conclusory factual allegations." Legal conclusions and conclusory statements are not accepted as true. *Id.* "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* The second step is to review only those factual allegations properly taken as true and determine whether they plausibly suggest an entitlement to relief. *Id.* A "pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Id.* at 678 (citing *Twombly*, 550 U.S. at 557). "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'"). *Id.*, quoting *Twombly*, 550 U.S. at 557. The factual allegations in the complaint must plausibly point to a basis for recovery under the law. *See*, *Twombly*, 550 U.S. at 562-63 (The "no set of facts" phrase "has earned its retirement" and "is best forgotten…"). Rule 8 "does not unlock the doors to discovery for a plaintiff armed with nothing more than conclusions." *Iqbal*, 556 at 678-79.

CLARK COUNTY IS NOT A PROPER DEFENDANT IN THIS ACTION

Clark County has been named as a defendant in this matter, presumably due to the mistaken belief that the county has the ability to adopt policies for the operation of the Clark County Jail and to control the employment, training, supervision and conduct of the jail staff (Complaint, ¶ 11).

As the Court is aware, it is a well-established principle under Indiana law, that the county, through its board of commissioners has no authority over the independently elected sheriff of the county or over the conduct of his employees. *Delk v. Bd. of Commissioners of Delaware Co.*, 502 N.D.2d 436, 440 (Ind. Ct. App. 1987). Nor does the county have any authority over the operation of the county jail. *Weatherholt v. Spencer Co.*, 639 N.E.2d 354, 356 (Ind. Ct. App. 1994). *See also, Donahue v. St. Joseph Co.*, 720 N.E.2d 1236, 1240 (Ind. Ct. App. 1999). In that the county has no legal authority over the employees of the sheriff nor the operation of the jail, it simply cannot adopt policies or condone practices governing these areas. The principle is so well established that several years ago the Seventh Circuit authorized sanctions against attorneys that mistakenly sued the county for the conduct of employees of the sheriff. *Estate of Drayton v. Nelson*, 93 F3d 165, 167-68 (7th Cir., 1994).

Clark County should be dismissed as a defendant in this matter.

THE COMPLAINT FAILS TO STATE A CLAIM AGAINST EITHER RODDEN OR NOEL IN THEIR INDIVIDUAL CAPACITIES

The plaintiff has named both former sheriff, Danny Rodden, and current sheriff, Jamey Noel, as defendants in their individual capacities in this case (Complaint, ¶¶ 12, 13).

As noted above, Rule 8(a)(2) of the Federal Rules requires only a "short and plain statement of the claim showing that the pleader is entitled to relief." The statement need only give the defendant fair notice of what the claim is and the grounds upon which it rests. *Twombly*,

550 U.S. at 555. However, "at some point the factual detail in a complaint may be so sketchy that the complaint does not provide the type of notice of the claim to which the defendant is entitled under Rule 8." *Brooks v. Ross*, 578 F.3d 574, 581 (7th Cir. 2009). The complaint in this case does not rise to the level of "sketchy" in regard to any claim against either Sheriff Rodden or Sheriff Noel, in their individual capacities.

Lawsuits under § 1983 against individuals require personal involvement in the alleged constitutional deprivation in order to support a viable claim. Consequently, individual liability under § 1983 can only be based on a finding that the defendant caused the deprivation at issue. *Palmer v. Marion Co.*, 327 F3d 588, 594 (7th Cir. 2003). *See also, Doyle v. Camelot Care Centers, Inc.*, 305 F.3d 603, 614 (7th Cir. 2002). ("It is well established that a plaintiff may only bring a § 1983 claim against those individuals personally responsible for the constitutional deprivation.") This principle means that a § 1983 action cannot be brought against individuals merely for their supervisory role of others. *Palmer*, 327 F.3d at 594; *Zimmerman v. Trible*, 226 F.3d 568, 574 (7th Cir. 2000). "[T]o establish a claim against a supervisory official, there must be a showing that the official knowingly, willfully, or at least recklessly caused the alleged deprivation by his action or failure to act." *Rascon v. Hardiman*, 803 F.2d 269 (7th Cir. 1986).

Sheriff Rodden was the sheriff of Clark County when plaintiff was incarcerated in the Clark County Jail (Complaint, ¶¶ 10, 12). There are no factual allegations in the complaint that Rodden participated in any of the conduct of which Houglin complains. There are not even any allegations that he was present at the jail during her incarceration or even that he was aware that she was in the jail. There are no allegations that Sheriff Rodden personally participated in or directed any of the alleged mistreatment of the plaintiff. *Burks v. Raemisch*, 555 F.3d 592, 593-

94 (7th Cir. 2009). To the extent that plaintiff's complaint seeks to present a claim against Sheriff Rodden in his individual capacity, it fails to state a claim for which relief can be granted.

The same is true, and even more so, in regard to any claim against Sheriff Noel, in his individual capacity. According to plaintiff's complaint, Noel did not become Sheriff of Clark County until November 2014, well after Houglin had been released from custody (Complaint, ¶¶ 10, 13). Again, there are no allegations that Noel personally participated in or directed any of the alleged mistreatment she suffered. Again, there is no allegation that he was even aware that she was in jail. In fact, there is no allegation that Noel had any connection whatsoever to the Clark County Sheriff's Department at the time of Houglin's incarceration. There clearly is no claim set forth against Sheriff Noel in his individual capacity. *Burks, supra*.

Both Sheriff Rodden and Sheriff Noel are entitled to dismissal of all claims against them in their individual capacities.

THE COMPLAINT FAILS TO STATE A CLAIM FOR OFFICIAL CAPACITY LIABILITY

Both Sheriff Rodden and Sheriff Noel are also being sued in their official capacity. Suing both sheriffs in their official capacity appears to be redundant, since it is basically a suit against the same office. Normally, when a sheriff leaves office, his successor is substituted for purposes of the official capacity claim. Defendants would urge the court to dismiss the official capacity claims against former Sheriff Rodden on this basis alone.

Pursuant to *Monell v. Department of Social Services,* 436 U.S. 658 (1978) a local governmental unit may not be sued under § 1983 for an injury inflicted solely by its employees or agents. *Estate of Sims ex rel Sims v. County of Bureau,* 506 F.3d 509, 514 (7th Cir. 2007). "Unless there is an unconstitutional policy, there cannot be official-capacity liability; only individual capacity liability is possible." *Id.* The courts have established three general ways to

demonstrate governmental liability under § 1983. The plaintiff must show (1) the alleged deprivations were conducted pursuant to an express policy, statement, ordinance or regulation that, when enforced, caused the constitutional deprivation, (2) the conduct was one of a series of incidents amounting to an unconstitutional practice so permanent, well settled and known to the policymaker as to constitute a "custom or usage" with the force of law; or (3) the conduct was caused by a decision of the final policymaker. *McTigue v. City of Chicago,* 60 F.3d 381, 382 (7th Cir. 1995). In order to survive a motion to dismiss, a plaintiff must plead factual context that allows the court to draw the inference that the governmental entity maintained an unconstitutional policy, custom or practice. *McCauley v. City of Chicago,* 671 F.3d 611, 616 (7th Cir. 2011).

The plaintiff's complaint does not allege facts showing the existence of any express policy of the Office of the Sheriff which allegedly brought about her loss. Nor, as noted above, is there any claim that a deprivation was caused by the decision of the sheriff.

"When a plaintiff chooses to challenge a municipality's unconstitutional policy by establishing a widespread practice, proof of isolated acts of misconduct will not suffice; a series of violations must be presented to lay the premise of deliberate indifference." *Palmer v. Marion County,* 327 F.3d 588, 596 (7th Cir. 2003). Only violations of federal constitutional or statutory standards can form the basis of liability; failure to meet state law requirements receives no remedy under § 1983, *Estate of Novack ex rel. Turbin v. County of Wood,* 226 F.3d 525, 531-32 (7th Cir. 2000).

In addition, regardless of the theory relied upon, "[m]unicipal liability attaches only where the decisionmaker possesses final authority to establish municipal policy with respect to the action ordered." *Pembaur v. City of Cincinnati,* 475 U.S. 469, 481 (1986). A plaintiff must

also show that the municipality's conduct was deliberate. *Bd. of County Comm'rs of Bryan County, Okla. V. Brown,* 520 U.S. 397, 404, 117 S.Ct. 1382, 137 L.Ed.2d 626 (1997). There also must be an affirmative link between the "policy" and the alleged constitutional violation to justify official capacity liability. *Tuttle,* 471 U.S. at 823. As the United States Supreme Court provided in *Bd. of Commissioners of Bryan County v. Brown,* 520 U.S. 397 (1997):

> As our section 1983 municipal liability jurisprudence illustrates, however, it is not enough for a section 1983 plaintiff merely to identify conduct properly attributable to the municipality. The plaintiff must also demonstrate that, through its *deliberate* conduct, that municipality was the "moving force" behind the injury alleged. That is, a plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights.

Id. at 404.

Again, in order to state a claim the plaintiff's complaint must contain factual content which would indicate a pattern of unconstitutional conduct. "[T]here is no clear consensus as to how frequently such conduct must occur to impose *Monell* liability, 'except that it must be more than one instance,' . . . or 'even three.'" *Thomas v. Cook County Sheriff's Department,* 604 F.3d 293, 303 (7th Cir. 2010) (citations omitted). *See also Estate of Moreland v. Dieter,* 395 F.3d 747, 760 (7th Cir. 2005) (Three incidents did not amount to a widespread practice that was permanent and well settled so as to constitute an unconstitutional custom or policy about which the sheriff was deliberately different).

The factual allegations contained in plaintiff's complaint primarily involve her own experience during the four days she was incarcerated. See complaint, ¶¶ 18-41. This recitation of factual allegations concerning Houghlin's own experiences is followed by a series of conclusory allegations, without supporting facts, which are nothing more than Houghlin projecting her own experience onto others, assuming that each female detainee suffered the same

unfortunate circumstances that she allegedly suffered. See complaint, ¶¶ 43-47. Such conclusory allegations are all preceded by "Upon information and belief." While there may not be anything objectionable to use of the terms "upon information and belief," the terms do not change the nature of the speculative and conclusory allegations offered without any supporting facts. Under *Iqbal*, these conclusory allegations should be disregarded.

The same is true in regard to plaintiff's complaint that she was temporarily held in the drunk tank which she considered to be overcrowded (Complaint, ¶¶ 52-55). Again, after the recitation of factual allegations concerning plaintiff's personal experiences, she makes conclusory allegations that the conditions she experienced are regular or routine, again without any factual basis.

Finally, plaintiff alleges that jail staff were not adequately trained (Complaint, ¶¶ 72-74). There are no factual allegations in the complaint regarding the training of jail officers. There are no allegations that they did not receive the state mandated training. There are no factual allegations of a pattern of conduct which would indicate the need for additional training. Again, this allegation is purely conclusory and will not suffice to state a claim for official capacity liability.

The complaint fails to state a claim for official capacity liability.

HOUGLIN HAS NO STANDING TO PURSUE INJUNCTIVE OR DECLARATORY RELIEF AND HER INDIVIDUAL CLAIM TO SUCH RELIEF IS MOOT

Federal judicial power extends only to "cases" or "controversies." U.S. Constitution, Art. III, § 2. Thus, before a plaintiff may bring a claim in federal court he must demonstrate he has standing to bring the case. *Friends of Earth v. Laidlaw Environmental Svcs.*, 528 U.S. 167 (2000). To satisfy Article III standing requirements, a plaintiff must show 1) he suffered an "injury in fact" that is concrete and particularized, actual or imminent, and not conjectural or

hypothetical; 2) there must be a causal link between the injury and the defendant's conduct, such that the injury is traceable to the action complained of; and 3) a favorable decision will likely redress the injury. *Lujan v. Defenders of Wild Life*, 504 U.S. 555, 560-61 (1992).

A plaintiff must demonstrate standing for the form of relief she seeks. *Friends of Earth*, 528 U.S. at 185. A plaintiff who has standing to seek damages does not automatically have standing to seek injunctive or declaratory relief. *Id. citing Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983). "Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continued present adverse effects." *O'Shea v. Littleton*, 414 U.S. 488, 495-96 (1974); *Perry v. Sheahan*, 222 F.3d 309, 313 (7th Cir. 2000). Instead, to demonstrate standing to pursue injunctive relief the plaintiff must show she is in real and immediate danger of sustaining future direct injury as a result of official conduct ongoing at the time of the suit. *Lyons*, 461 U.S. at 102; *Sierakowski v. Ryan*, 233 F.3d 440, 443 (7th Cir. 2000); *Robinson v. City of Chicago*, 868 F.2d 959, 966 (7th Cir. 1989).

The requirement of an actual case or controversy under Article III of the Constitution exists not only when the case is filed, but at every phase of the proceedings. *Jones v. Sullivan*, 938 F.2d 801, 805 (7th Cir. 1991). Consequently, in addition to standing, Article III requires that the case not be moot. *Friends of Earth*, 528 U.S. at 189. The case or controversy requirement demands that a cause of action before a federal court present a "justiciable" controversy and "no justiciable controversy is presented . . . when the question sought to be adjudicated has been mooted by subsequent developments . . . ." *Flast v. Cohen*, 392 U.S. 83, 95 (1968). A claim becomes moot when the issues presented are no longer alive or the parties lack a legally cognizable interest in the outcome. *Murphy v. Hunt*, 455 U.S. 478, 481 (1982). The court lacks

jurisdiction to adjudicate a claim that is moot. *Bd. of Education of Downers Grove Grade School Dist. No. 58 v. Steven L.*, 89 F.3d 464, 467 (7th Cir. 1996) *cert. denied*, 520 U.S. 1198 (1997).

According to the complaint in this matter, Houglin was released from the Clark County Jail on August 15, 2014 (Complaint, ¶ 10). Yet Houglin did not bring this action until May 31, 2016, nearly two (2) years after her release. There is no allegation in the complaint that Houglin is likely to be incarcerated in the Clark County Jail in the future. Rather, the court must presume that she will follow the law in the future and so avoid arrest and incarceration under the conditions of which she complains. *Lyons*, 461 U.S. at 103; *Robinson*, 868 F.2d at 966. Her individual claims for injunctive and declaratory relief are therefore moot. *Martin v. Davies*, 917 F.2d 336, 339 (7th Cir. 1990); *Lehn v. Holmes*, 364 F.3d 862, 871 (7th Cir. 2004). A party who cannot demonstrate that an injunction will accomplish some tangible good in her favor, has no standing to seek injunctive relief. *Mann v. Hendvian*, 871 F.2d 51, 52 (7th Cir 1989).

Nor will the concept of "capable of repetition, but evading review" save Houglin's claims for injunctive and declaratory relief. Houglin had no standing to request injunctive or declaratory relief on the day the suit was filed. "This case was dead on arrival, moot the day the complaint was filed. So far as equitable relief was concerned, there was *never* a case or controversy within the meaning of Article III of the Constitution." *Holmes v. Fisher*, 854 F.2d 229, 232 (7th Cir. 1988).

Houglin's claims for injunctive and declaratory relief must be dismissed.

Conclusion

For all of the above and foregoing reasons, defendants Clark County, Rodden and Noel, in their individual and official capacities, respectfully pray the Court to dismiss all claims asserted against them in the Complaint in this matter and for all other just and proper relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2016, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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