

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

Luke Lefever v. Nebraska Department of Correctional Services, et al.

LeFever · No. 8:23CV187 · Decided February 13, 2026

SUMMARY

The United States District Court for the District of Nebraska conducts an initial review of Luke Lefever’s second amended prisoner civil-rights complaint. The court dismisses Claims 1 and 3, concerning alleged denial of access to courts, for failure to state a claim, denies the motion for appointment of counsel, and directs the plaintiff to choose whether to dismiss or sever Claims 2, 4, 5, and 6. The order also addresses improper joinder, Eleventh Amendment immunity, and correction of a defendant’s name on the docket.

CASE DETAILS

COURT	United States District Court for the District of Nebraska
WRITING FOR THE COURT	M. Gerrard
JURISDICTION	United States District Court for the District of Nebraska
DECIDED	February 13, 2026
DOCKET	8:23CV187
DISPOSITION	dismissed
PROCEDURAL POSTURE	Initial screening of a prisoner's second amended civil-rights complaint under 28 U.S.C. §§ 1915(e)(2) and 1915A(b).
STANDARD OF REVIEW	On initial review, the court must dismiss an in forma pauperis or prisoner complaint that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from an immune defendant. Pro se pleadings are liberally construed, but must still allege facts that state a legally cognizable claim. The court applied the plausibility standard under Federal Rule of Civil Procedure 8 and the pleading principles of Twombly and Iqbal.
PRECEDENTIAL VALUE	unpublished, nonprecedential district-court memorandum and order
PARTIES	Luke Lefever v. Nebraska Department of Correctional Services, A.W. Cruickshank, Kevin Wilken, P.L.I.O, C.O. Schults, C.O. De Los Santos

TOPICS

section 1983

joinder

civil procedure

eleventh amendment immunity

prisoners rights

PRACTICE AREAS

civil rights

prisoner litigation

federal civil procedure

constitutional immunity

appellate and access-to-courts litigation

QUESTIONS PRESENTED

1. Whether Lefever stated a claim under § 1983 for denial of meaningful access to the courts based on the missed hearing and delayed notice of appeal.
2. Whether claims for damages against NDCS and employees sued in their official capacities were barred by the Eleventh Amendment.
3. Whether the unrelated law-library, confiscated-book, Kansas-lawsuit, and legal-mail claims were improperly joined and should be dismissed or severed.
4. Whether appointment of counsel was warranted in the civil action.

HOLDINGS

1. Claims for monetary damages against the Nebraska Department of Correctional Services and against Wilken and Schults in their official capacities are barred by the Eleventh Amendment because NDCS is an arm or agency of the State and an official-capacity suit is treated as a suit against the State.
2. Lefever failed to state an individual-capacity claim against Wilken or Schults for denial of access to the courts because he did not allege facts showing that a nonfrivolous legal claim had been frustrated or impeded.
3. The law-library, confiscated-book, Kansas-lawsuit, and legal-mail claims were not properly joined because they did not arise from the same transaction or occurrence and did not present a common question of law or fact; the plaintiff was therefore required to choose dismissal or severance of those claims.
4. Appointment of counsel was not warranted at the current stage, but the denial was without prejudice to reconsideration if later developments demonstrated a need for counsel.

KEY QUOTATIONS

“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”

“to prove actual injury resulting from an alleged lack of meaningful access to the courts, a plaintiff must ‘demonstrate that a nonfrivolous legal claim had been frustrated or was being impeded.’” (24)

FACTUAL BACKGROUND

Lefever, an incarcerated person, alleged that prison employee Kevin Wilken failed to bring him to a telephonic hearing in a Nebraska state-court action and that employee C.O. Schults delayed mailing his notice of appeal,

resulting in dismissal of the appeal as untimely. He alleged that these events denied him access to the courts, but did not describe the underlying claims or show that the frustrated state-court litigation was nonfrivolous. The complaint also asserted unrelated claims concerning law-library access, a confiscated book, a Kansas lawsuit, and NDCS's legal-mail policy.

PROCEDURAL HISTORY

Lefever filed a second amended complaint on July 2, 2025, alleging denial of access to the courts, restricted law-library access, confiscation of a book, and improper handling of legal mail, among other claims. The court screened the complaint, addressed only the first properly joined set of claims involving a missed Lincoln County hearing and an untimely appeal, dismissed those claims for failure to state a claim, denied appointment of counsel without prejudice, and directed Lefever to elect whether to dismiss or sever the remaining claims into separate actions.

DISPOSITION

dismissed

CASES CITED

- *Topchian v. JPMorgan Chase Bank, N.A.*, 760 F.3d 843, 848-49 (8th Cir. 2014)
- *Hopkins v. Saunders*, 199 F.3d 968, 973 (8th Cir. 1999)
- *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 569-70 (2007)
- *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
- *Stone v. Harry*, 364 F.3d 912, 915 (8th Cir. 2004)
- *Martin v. Aubuchon*, 623 F.2d 1282, 1286 (8th Cir. 1980)
- *Duvall v. Sharp*, 905 F.2d 1188, 1189 (8th Cir. 1990)
- *Haley v. Dormire*, 845 F.2d 1488, 1490 (8th Cir. 1988)
- *Bailey v. Doe*, No. 11-2410, 2011 WL 5061542 (8th Cir. Oct. 26, 2011) (unpublished)
- *Yanga v. Nebraska Dep't Corr. Servs.*, No. 8:19CV420, 2020 WL 4784723, at *2 (D. Neb. Aug. 18, 2020)
- *Campbell v. State of Iowa*, Third Judicial Dist. Dept. of Corr. Serv., 702 F.3d 1140, 1141 (8th Cir. 2013)
- *Johnson v. Outboard Marine Corp.*, 172 F.3d 531, 535 (8th Cir. 1999)
- *Monroe v. Ark. State Univ.*, 495 F.3d 591, 594 (8th Cir. 2007)
- *Nix v. Norman*, 879 F.2d 429, 431-32 (8th Cir. 1989)
- *Egerdahl v. Hibbing Cmty. Coll.*, 72 F.3d 615, 619 (8th Cir. 1995)
- *Dover Elevator Co. v. Arkansas State Univ.*, 64 F.3d 442, 446-47 (8th Cir. 1995)
- *Novascone v. Nebraska Dep't of Corr. Servs.*, No. 8:19CV201, 2019 WL 6307565, at *2 (D. Neb. Nov. 25, 2019)
- *Reising v. Lewien*, No. 8:18CV352, 2019 WL 1585142, at *3 (D. Neb. Apr. 12, 2019)
- *Lewis v. Casey*, 518 U.S. 343, 353 (1996)
- *Phillips v. Jasper Cnty. Jail*, 437 F.3d 791, 794 (8th Cir. 2006)

- Chambers v. Pennycook, 641 F.3d 898, 909 (8th Cir. 2011)
- Recca v. Omaha Police Dep't, 859 F. App'x 3, 4 (8th Cir. 2021)
- Davis v. Scott, 94 F.3d 444, 447 (8th Cir. 1996)
- Williams v. Carter, 10 F.3d 563, 567 (8th Cir. 1993)

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