

No. 18-7315

United States Court of Appeals
FOR THE FOURTH CIRCUIT

DAVID GRAHAM GOODMAN,
Petitioner-Appellant,

v.

Z. DIGGS, et al,
Respondents-Appellees.

Appeal from the United States District Court
for the Eastern District of Virginia

BRIEF OF APPELLANT

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October 15, 2019

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STATEMENT OF JURISDICTION

The district court had subject-matter jurisdiction under 28 U.S.C. § 1331 because Mr. Goodman's complaint alleges an Eighth Amendment violation pursuant to 42 U.S.C. § 1983. The district court granted summary judgment against that claim and dismissed his remaining state law claims on September 26, 2018. Mr. Goodman filed a timely appeal from that final order twenty-three days later. Fed R. App. P. 4(a)(1). This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

- I. Whether the district court improperly ignored Mr. Goodman's sworn allegations of malicious, serious physical abuse by jail officials and therefore erred in granting summary judgment against his Eighth Amendment claim.
- II. Whether the district court abused its discretion by failing to act on Mr. Goodman's repeated motions to discover specific evidence that would corroborate the alleged abuse and demonstrate a material factual dispute between his sworn allegations and jail officials' contrary version of events.

STATEMENT OF THE CASE

David Graham Goodman, a mobility-impaired inmate in state custody, seeks to hold accountable four jail officials who subjected him to serious physical abuse. According to his sworn allegations, defendants twice dragged him by the collar of his jumpsuit across a concrete floor, repeatedly slammed his body into the floor, stood on his weakened neck and back, stomped on his left hand, and dug a thumb into a pressure point. He was found unconscious thirty minutes later in a pool of his own blood, and needed surgery for his injuries. Mr. Goodman, who is unable to walk without assistance and uses a wheelchair, was fifty-seven years old when these events occurred.

For more than six years, the district court stymied Mr. Goodman's diligent efforts as a pro se litigant to pursue his Eighth Amendment excessive force claim against defendants. The district court twice dismissed Mr. Goodman's case in error; ignored numerous discovery motions for years without response or ruling; and granted summary judgment against him by wrongly disregarding his sworn allegations of unjustified physical abuse. Because Mr. Goodman's allegations state a viable Eighth Amendment claim, and the court dismissed his case without acting on his many motions to discover relevant evidence to corroborate his account, summary judgment was improper.

I. FACTUAL BACKGROUND

Mr. Goodman was physically disabled when these events occurred. He uses a wheelchair and cane and has had multiple surgeries, including cervical fusion, for various neck and spinal cord complications. JA16-17, JA20, JA44. In his sworn complaints, Mr. Goodman alleges the following facts.

On November 7, 2012, prison authorities transferred him for the day from Chesapeake Correctional Center (“Chesapeake”) to Virginia Beach Correctional Center (“VBCC”) to attend a probation violation hearing. JA13, JA37. After the hearing, authorities returned Mr. Goodman to VBCC and held him on a bench in an intake area to await transport back to Chesapeake. JA15, JA40.

A. Deputy Hayes’ Use of Force

Later that afternoon, Deputy Hayes¹ told Mr. Goodman to get in a wheelchair to be moved to a cell in the medical block. JA15, JA40, JA163 ¶ 4. Because he is disabled, Mr. Goodman asked whether he would be placed on a lower bunk. Deputy Hayes replied that he would be sleeping on the floor and became angry when Mr. Goodman protested: “No! I have spinal cord damage, [and] cannot be placed on floor!” JA15, JA40. Deputy Hayes grabbed Mr. Goodman by the collar of his jumpsuit and dragged him fifty to sixty feet across a concrete floor to a holding cell in the intake unit. JA15-16, JA40. Mr. Goodman laid flat and did not resist while

¹ Mr. Goodman’s first two verified complaints label Deputy Hayes as Defendant 2.

being dragged. JA16. Deputy Hayes left Mr. Goodman lying on the cell floor. JA16, JA40. Without his cane, Mr. Goodman could not get off the floor. JA16, JA40.

Deputy Hayes tells a different story. He alleges that Mr. Goodman initially complied with his direction to move from bench to wheelchair. JA163 ¶ 4. But upon learning he had to sleep on the floor, Mr. Goodman got out of the wheelchair, sat back on the bench, cursed and threatened Deputy Hayes, and refused orders to stand. *Id.* Deputy Hayes took hold of Mr. Goodman under his left arm and stood him up to escort him to a holding cell. *Id.* Because Mr. Goodman dropped all his weight to the floor and refused to get up, Deputy Hayes dragged him into the holding cell. *Id.* ¶ 5.

B. Sergeant Moissett and Deputies Hayes and Repass' Use of Force

Mr. Goodman alleges he remained on the floor until an intake officer helped him into a wheelchair so three other officers—Sergeant Moissett and Deputies Diggs and Repass²—could move him to the medical block. JA20, JA40, JA42. While being moved, Mr. Goodman was displaced from his wheelchair (he is unsure how this happened) and landed on the floor. JA20, JA42. Sergeant Moissett cursed at him, grabbed him with “severe force,” and slammed him into the floor. JA20, JA42.

² Mr. Goodman’s complaints label Sergeant Moissett, Deputy Diggs, and Deputy Repass as Defendants 3, 4, and 5, respectively.

One of the officers placed handcuffs on Mr. Goodman who was face down on the floor.³ JA20, JA42. Sergeant Moissett and Deputy Diggs dragged the handcuffed Mr. Goodman about 100 yards down the hall to another cell. JA20, JA42-43.

In the cell, Deputy Diggs and Sergeant Moissett slammed him into the concrete floor, lacerating his head. JA20-21, JA43, JA156-57. As they removed his handcuffs, Deputy Diggs placed his foot on Mr. Goodman's back, JA21, JA43, and Deputy Repass stood on his neck. JA17, JA44. Despite Mr. Goodman's warnings about his multiple neck surgeries and complications, JA20, JA44, Deputy Repass moved to place her knee on his neck, "grinding [his] face into the floor." JA17-18, JA44-45. Once the handcuffs were removed, Deputy Repass placed her weight⁴ on Mr. Goodman's left hand. JA21, JA44-45. At some point, she dug her thumb into a pressure point behind his right ear. JA17-18, JA20, JA44-45. Mr. Goodman felt "extreme pain" and lost consciousness. JA18, JA45. The three officers left him unconscious on the concrete floor, lying in a pool of blood from his head injury. JA18, JA38, JA156.

Defendants again tell a different story. They allege that Mr. Goodman purposely threw himself out of the wheelchair and refused their orders to stand.

³ Mr. Goodman identifies different defendants in different complaints. JA20, JA42. Because he was facedown, he is unable to recall some specific details. He identifies the facts he is unsure about in his complaints. JA20.

⁴ He alleges that Deputy Repass placed either her knee or foot on his hand. JA21, JA44-45.

JA147 ¶ 8. Deputies Diggs and Repass each took one of his arms, raised him to a standing position, and began escorting him down the hall. *Id.* ¶ 9. When Mr. Goodman tried to pull his arm from Deputy Diggs, the two deputies “rolled [him] onto his stomach.” JA166 ¶ 5. Deputy Repass accessed a pressure point behind Mr. Goodman’s ear, while Sergeant Moissett handcuffed him. JA147 ¶ 9, JA166 ¶ 5, JA172 ¶ 4. The officers got Mr. Goodman on his feet and escorted him to the medical unit, but he kept trying to bang his head against walls. JA147 ¶ 11. Once they got him to a cell in the medical isolation department, Mr. Goodman complied with their verbal commands. *Id.* ¶ 12. The officers placed him on his stomach, and Deputy Diggs put his “knee in the T-3 area of Mr. Goodman’s back” to maintain control as they removed the handcuffs. JA169 ¶ 7. Defendants allege that Mr. Goodman declined medical treatment but was seen by a nurse. JA147 ¶ 12-13.

C. Post-Assault Events

Mr. Goodman alleges that after lying unconscious in his own blood for about thirty minutes, a different officer found him and took him to a medical center for examination. JA18. The jail nurse’s report confirms he was found lying on the cell floor in a pool of darkened blood. JA156. The nurse diagnosed a possible concussion and observed an actively bleeding open cut above his left eye. JA13, JA37, JA156. Officials denied Mr. Goodman’s request to be taken to a hospital.

JA13, JA37-38. Mr. Goodman asked the nurse to preserve any videotape recording of the incident for a potential lawsuit. JA156.

Authorities returned Mr. Goodman to Chesapeake the next day. JA13, JA38. Because of the abuse he suffered at VBCC, Mr. Goodman has experienced continuing pain in his left hand and required surgery. JA91.⁵ He has also needed medical treatment for his neck, back, and right shoulder. JA19, JA47.

II. PROCEDURAL HISTORY

Mr. Goodman filed this case pro se in May 2013 alleging excessive force in violation of the Eighth Amendment. He spent the first year and a half litigating whether the district court erred by twice dismissing his case (it had). He spent the next year litigating whether he was entitled to proceed *in forma pauperis* and conduct discovery prior to summary judgment (he was). And he spent years three through five continuously seeking discovery. After defendants said they had destroyed video footage—the one piece of evidence the district court had ordered be disclosed—Mr. Goodman pressed for disclosure of other evidence supporting his claims in six discovery motions over three years with no response from defendants or rulings from the district court.

⁵ In his second amended complaint, which is unsworn, Mr. Goodman alleges that he has had surgery on his hand as a result of the injury caused by Deputy Repass. JA91.

A. Dismissals and Subsequent Appeals to this Court, 2013-2014

Mr. Goodman filed a verified complaint and application for leave to proceed *in forma pauperis* on May 1, 2013. JA9. His complaint named as defendants Kenneth Stolle (the Virginia Beach sheriff) and four unnamed correctional officers. JA9-11. He requested discovery identifying the officers who used force against him and disclosing all video footage of his interactions with the officers, medical reports and photographs documenting his injuries, and any relevant statements or reports. JA23. The district court dismissed the case twice, only for it to be reinstated both times. JA 53, JA 55, JA56, JA62.

1. First Dismissal, 2013

The district court ordered Mr. Goodman to (1) particularize his allegations against Sheriff Stolle, (2) allege administrative exhaustion, and (3) consent to release information supporting his *in forma pauperis* application. JA28. It dismissed his discovery motion as premature. JA32. Mr. Goodman timely complied with the court's order. He filed an amended verified complaint particularizing his allegations against Sheriff Stolle along with the two other documents and renewed his discovery motion. JA1, JA33, JA49, JA51. The district court dismissed his amended complaint in the mistaken belief that he had not filed an affidavit of exhaustion or consent form. JA53. Mr. Goodman appealed the dismissal and this Court reversed

because the district court had “relied on an erroneous factual premise.” *Goodman v. Stolle*, 549 F. App’x. 231, 232 (4th Cir. 2014).

2. *Second Dismissal, 2014*

On remand, the district court again dismissed Mr. Goodman’s complaint, holding him ineligible to proceed *in forma pauperis*. JA56. Mr. Goodman again appealed. JA58. The district court issued an order saying it had erred and would reinstate the complaint if it regained jurisdiction of the case. JA60.

This Court dismissed the appeal, and the district court reinstated the complaint. JA62. But it did not rule on Mr. Goodman’s *in forma pauperis* application. Instead, it dismissed his claim against Defendant Stolle for failure to allege sufficient facts establishing supervisory liability and allowed Mr. Goodman to propound a single interrogatory limited to the names of the four unnamed defendants. JA65. Mr. Goodman filed a letter asking the court to grant his earlier motion for discovery. JA67.

B. Permission to Proceed *In Forma Pauperis*, 2014

Mr. Goodman filed a second amended complaint making only two changes from his initial and first amended complaints: (1) he named the unnamed defendant correctional officers; and (2) he asked for additional relief based on the same claims. JA76-77. He also filed another discovery motion seeking his medical reports and digital photographs of his injuries. JA96; *see also* JA115 (again moving

for discovery), JA119 (same). Because the court had not yet granted Mr. Goodman permission to proceed *in forma pauperis* and defendants had not been served, the district court denied discovery, granted *in forma pauperis* status, and served the remaining defendants. JA112-13, JA127-30.

C. Defendants' First Summary Judgment Motion, 2014-2015

With the case reinstated and all parties served, Mr. Goodman renewed his discovery motion, adding requests for relevant video footage and for any statements made by an inmate eyewitness, Brandon Coburn. JA132-34 (citing JA96). Defendants opposed discovery, arguing they would “soon be filing a dispositive motion in response to [Mr. Goodman’s] claims.” JA136. Mr. Goodman responded that discovery was “imperative to [his] case.” JA141; *see also* JA175.

In January 2015, defendants moved for summary judgment, supported by records and affidavits describing their narrative of events. JA144. In his opposition brief and in yet another discovery motion filed the same day, Mr. Goodman reiterated that he still needed video footage of the event, his medical records, digital photographs of his injuries, and any statements made by medical staff. JA175, JA184-85.

The district court denied Mr. Goodman’s discovery motion as premature in light of defendants’ dispositive motion. JA191. Three months later, the court concluded that some discovery was necessary before ruling on defendants’ motion.

JA192-93, JA198. The court held summary judgment was premature because Mr. Goodman had “shown that he has not had the opportunity to discover potentially essential information.” JA197 & n.2. It ordered defendants to produce video footage referenced in their filings and denied summary judgment without prejudice. JA198-99.

Defendants responded with an affidavit explaining they could not produce the footage. JA200. The video was not preserved “[b]ecause there was no inmate complaint” about their use of force and the officers found “no violation of the use of force policy” when they viewed the footage. *Id.* ¶ 7. Mr. Goodman challenged this explanation, stating he had filed several complaints reporting the incident. JA204-05.

D. Mr. Goodman’s Discovery Requests, 2015-2018

Over the next three years, Mr. Goodman diligently pursued discovery of medical records, photographs, eyewitness testimony, and any incident reports or statements. Many times. *See* JA204, JA209, JA212, JA217, JA221, JA225. With no response from defendants or ruling by the district court. Nineteen of the twenty docket entries over these three years are Mr. Goodman’s. The remaining entry is a letter from this Court telling Mr. Goodman it would not intervene to speed district court proceedings absent “extraordinary delay.” JA229.

E. Defendants' Second Summary Judgment Motion, 2018

Mr. Goodman twice filed a summary judgment motion, noting that he had “submitted and resubmitted” discovery motions since June 2013. JA231, JA236. He described the evidence sought in several outstanding discovery motions, emphasized the availability of an eyewitness, and argued a negative inference should attach to defendants’ failure to produce the video footage as ordered. JA236-40. Six days later, defendants renewed their motion for summary judgment on the record as it stood in 2015. JA245. Defendants argued they were entitled to summary judgment because Mr. Goodman had “offer[ed] no evidence” to counter their assertions they had “used only the minimum amount of force necessary.” JA253.

Mr. Goodman opposed defendants’ summary judgment motion, arguing that he still needed discovery. *See* JA282-83 (argument section). He summarized the allegations in his complaints, asserted that “evidence of abuse” exists in the form of “medical records, photos, etc.,” and described the injuries those records will show. JA282. He stated: “[I]f there were no proof or evidence of abuse, [opposing] counsel would be correct [that his clients are entitled to summary judgment], but medical records, photos, etc. indicate [the contrary] [I]n the interest of justice, the medical records, digital photos, notes, [and other] medical evidence should be examined and then a ruling by the honorable court [should issue]. For this will prove a cognizable 8th Amendment Claim.” JA282. Responding to defendants’ assertion

that he suffered only *de minimis* injuries, Mr. Goodman argued “medical evidence will prove” that “[t]here was and is serious injury.” *Id.* Mr. Goodman included with his opposition a motion asking the district court to subpoena his medical records from two correctional facilities. JA292.

F. The District Court’s Decision

The district court granted defendants’ summary judgment motion and dismissed as moot Mr. Goodman’s latest motion to access his medical records. JA306. It did not address his remaining discovery motions. *Id.* The court held that because Mr. Goodman’s opposition was neither sworn nor notarized, the statements in it could not be considered as evidence. JA301. And because Mr. Goodman had provided no other evidence, defendants’ affidavits were uncontested. JA301-02. Viewing defendants’ version of events as undisputed, the district court held Mr. Goodman failed to establish an Eighth Amendment claim. JA303. Even if Mr. Goodman’s opposition had been sworn, the district court found it “a conclusory recapitulation of the complaint without additional supporting evidence” and thus necessarily “insufficient to defeat defendants’ summary judgment motion.” JA301 n.4.

The district court expressed “concern[.]” that defendants destroyed all video footage of their use of force, noting that VBCC staff recorded Mr. Goodman’s “interest in viewing the videotape for a lawsuit shortly after the alleged

incidents.” JA303 n.5. The court had “encountered in other cases a failure on the part of state authorities to preserve videotapes under circumstances where it arguably should have been preserved” and advised that “in the future it will examine critically the failure to preserve videotapes of physical altercations with inmates.” *Id.* But it concluded summary judgment was nonetheless appropriate absent a sworn statement. *Id.*

SUMMARY OF THE ARGUMENT

Mr. Goodman filed two verified complaints that are affidavits for summary judgment. In those complaints, Mr. Goodman alleged facts that directly conflict with defendants' factual allegations and demonstrate a genuine dispute of material fact on his Eighth Amendment excessive force claim. Mr. Goodman, who is disabled, alleges defendants, without justification, slammed him against the floor several times, dragged him across the floor while handcuffed, and stepped on his neck, back, and hand. Defendants continued their abuse even after Mr. Goodman informed them of his spinal cord complications and neck surgeries. They left Mr. Goodman on the floor where he was later found lying in a pool of blood. Their assault caused multiple injuries, lacerating his head and requiring surgery on his hand.

Mr. Goodman's allegations and documented injuries state a plausible Eighth Amendment excessive force claim. First, on these facts, a jury could find the officers maliciously intended to cause him harm. Mr. Goodman posed no security threat. He is an older inmate who uses a wheelchair and cannot stand without his cane or assistance. Yet defendants twice dragged him in handcuffs down the jail's concrete hallway. Defendants admit Mr. Goodman complied with their orders once they got him into the medical block cell. But two of the officers slammed his head into the

cell floor and stepped on his head, neck, and hand. Second, these allegations show defendants used more than *de minimis* force as defined by the Supreme Court.

The district court erred by considering only Mr. Goodman's unsworn opposition to summary judgment rather than his sworn complaints. Mr. Goodman's verified complaints are sufficient to oppose summary judgment because sworn allegations in a verified complaint, like an affidavit, are testimonial evidence rather than mere assertions. Had the court considered his verified allegations, it would necessarily have found that Mr. Goodman demonstrated a genuine dispute of material fact that precluded summary judgment.

Even if Mr. Goodman's sworn allegations were insufficient, summary judgment was premature in light of his pending discovery requests. Mr. Goodman received no discovery other than defendants' names. Summary judgment may not be granted against a litigant whose outstanding discovery motions seek evidence essential to his claim. Mr. Goodman submitted and resubmitted six motions seeking disclosure of medical records, digital photographs of his injuries, a statement from an identified inmate eyewitness, and institutional incident reports. Defendants never responded to Mr. Goodman's discovery motions, nor did the district court, which summarily denied one as moot when it granted summary judgment and ignored the rest. Because Mr. Goodman properly sought to discover relevant evidence to

document and corroborate his sworn allegations of abuse, summary judgment was premature and an abuse of discretion.

ARGUMENT

I. THE DISTRICT COURT ERRED IN GRANTING SUMMARY JUDGMENT BECAUSE MR. GOODMAN DEMONSTRATED GENUINE DISPUTES OF MATERIAL FACT

Summary judgment is reviewed de novo, *Woods v. Berryhill*, 888 F.3d 686, 691 (4th Cir. 2018), and may not be granted where there are genuine and material factual disputes. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). This Court must view the facts and draw inferences in the light most favorable to Mr. Goodman. *Id.* at 255. The conflicting accounts of defendants' use of force against Mr. Goodman establish that the disputes are genuine. *See Davis v. Zahradnick*, 600 F.2d 458, 459-60 (4th Cir. 1979). And Mr. Goodman's factual allegations establish materiality. Mr. Goodman's verified factual allegations establish an Eighth Amendment excessive force claim because they show defendants maliciously injured him by smashing his head into the concrete floor, standing and kneeling on his neck and back, and twice dragging him across the floor. *See Brooks v. Johnson*, 924 F.3d 104, 112-13 (4th Cir. 2019). This Court should reverse summary judgment because Mr. Goodman demonstrated genuine and material factual disputes.

The district court erred in failing to treat the sworn allegations in Mr. Goodman's verified complaints as testimonial evidence when ruling on summary judgment. *See World Fuel Servs. Trading, DMCC v. Hebei Prince Shipping Co.*, 783 F.3d 507, 516 (4th Cir. 2015) (holding that verified complaints are affidavits for

the purpose of opposing summary judgment). The court instead incorrectly treated defendants' affidavits as unopposed because Mr. Goodman filed an unsworn opposition to summary judgment (JA276). But Mr. Goodman's sworn allegations in his verified complaints served as affidavits for summary judgment purposes.

A. Mr. Goodman's Sworn Account of Defendants' Use of Force Demonstrates Genuine Disputes of Material Fact

The district court erred in granting summary judgment because Mr. Goodman's sworn complaints stated a plausible Eighth Amendment excessive force claim against each defendant. Eighth Amendment excessive force claims require two elements. Mr. Goodman must first show defendants "acted with a sufficiently culpable state of mind." *Brooks*, 924 F.3d at 112 (citation omitted). Mr. Goodman can show defendants acted with the requisite state of mind—"wantonness in the infliction of pain"—by proving force was applied maliciously or sadistically for the purpose of causing harm, rather than in a good faith effort to maintain or restore discipline. *See Whitley v. Albers*, 475 U.S. 312, 320-22 (1986). Second, Mr. Goodman must show defendants used sufficiently serious force, which is "not a high bar" and requires only more than *de minimis* force. *Brooks*, 924 F.3d at 112.

Mr. Goodman's verified factual allegations support a reasonable inference defendants dragged and beat him to punish, harm, or embarrass him for perceived insubordination rather than to maintain order or restore discipline. That satisfies the requisite culpable mental state. Mr. Goodman's alleged facts demonstrate the force

used against him was more than *de minimis*. That satisfies the seriousness requirement. To be sure, defendants disagree—they say they used only minimal force to subdue Mr. Goodman because he was uncooperative and that he injured himself by slamming his head against the wall. But these conflicting accounts require a jury to decide how and why Mr. Goodman was injured that day. The jury’s resolution of the genuine material factual dispute will establish whether defendants used excessive force in violation of the Eighth Amendment. *See Davis*, 600 F.2d at 459-60; *Raynor v. Pugh*, 817 F.3d 123, 130 (4th Cir. 2016).

Record evidence also supports Mr. Goodman’s sworn statements. Mr. Goodman asked a nurse to preserve the videotape immediately after the incident. JA303 n.5. Defendants nonetheless destroyed that video footage so it no longer exists. JA200. This spoliation of evidence where it “arguably should have been preserved,” JA303 n.5, supports an adverse inference of malicious intent and the use of more than *de minimis* force against Mr. Goodman. *See Vodusek v. Bayliner Marine Corp.*, 71 F.3d 148, 155 (4th Cir. 1995) (holding that adverse inference may be drawn against party who destroys relevant evidence). Indeed, Mr. Goodman argued this to the district court. *See* JA237. And the nurse who examined Mr. Goodman confirmed the undisputed fact that he was found lying on the cell floor in a pool of blood. JA257. Mr. Goodman alleged facts sufficient to support a jury

finding that each defendant acted with a culpable state of mind and used excessive force.

1. Deputy Hayes

Mr. Goodman initially refused to get in the wheelchair for transport to the medical unit where he would have to sleep on the floor because, as he told Deputy Hayes, spinal cord damage left him medically unable to lie on the floor. JA16, JA40. In response, Deputy Hayes became angry and dragged Mr. Goodman by the collar of his jumpsuit fifty feet to an intake cell and left him on the concrete floor. JA16, JA40. Mr. Goodman could not get up because he did not have his cane, and he remained on the floor until another deputy came to help him stand and put him in a wheelchair. JA16, JA40-41. Deputy Hayes' use of force against Mr. Goodman demonstrates both a culpable state of mind and more than *de minimis* force.

First, Deputy Hayes' actions demonstrate a culpable mental state because Mr. Goodman presented no security risk requiring use of any force. *Brooks*, 924 F.3d at 116 (holding that lack of a reasonably perceived threat to safety may bolster claim that defendants acted maliciously). Mr. Goodman, fifty-seven and disabled, alleges he did not resist. JA16. Instead, he "laid flat" as Deputy Hayes forcefully dragged him fifty to sixty feet across the floor. JA16. If Mr. Goodman was compliant with Deputy Hayes' directives to move him, *no* force was required to maintain order. *See Brooks*, 924 F.3d at 113, 116-18.

Even if a jury found Deputy Hayes needed to use some force to get Mr. Goodman into the wheelchair, dragging him across the concrete floor by the collar of his jumpsuit shows malicious intent. The evidence of malice is stark. Deputy Hayes (1) dragged Mr. Goodman by the collar of his jumpsuit for fifty feet, (2) knowing that Mr. Goodman had a spinal cord injury and needed a wheelchair, (3) even though Mr. Goodman was not resisting. JA15-16, JA40. From this, a juror could reasonably conclude Deputy Hayes intended to punish Mr. Goodman for saying he needed a bottom bunk due to his spinal cord injury. *See Orem v. Rephann*, 523 F.3d 442, 447 (4th Cir. 2008) (holding defendant's use of a taser immediately after plaintiff cursed at officer supported inference that force was punitive), *abrogated on other grounds by Wilkins v. Gaddy*, 559 U.S. 34 (2010). Deputy Hayes responded angrily when Mr. Goodman said he could not sleep on the floor, suggesting punitive intent. JA40. Mr. Goodman's age and disability would support a jury finding that he posed no security risk to Deputy Hayes, permitting an inference that he acted maliciously. JA16, JA40; *see Brooks*, 924 F.3d at 116 (noting that use of force absent a risk to officers can indicate malicious intent). Finally, Deputy Hayes demonstrated malicious intent by leaving Mr. Goodman on the cell floor knowing he was disabled by spinal impairments. JA16, JA40. *See Telfair v. Gilberg*, 868 F. Supp. 1396, 1413 (S.D. Ga. 1994) (finding inmate's prosthetic hip

lessened any threat and supported officer's intent to punish rather than maintain order).

Dragging Mr. Goodman by the collar of his jumpsuit across a concrete floor for fifty feet was far more than *de minimis* force and not just a trivial push or shove. If someone on the street dragged another person over that length of sidewalk, it would easily constitute battery. *See, e.g., Pitt v. Commonwealth*, No. 2607–08–2, 2009 WL 3347076, at *3 (Va. Ct. App. Oct. 20, 2009). And Deputy Hayes' force was particularly harmful given Mr. Goodman's disabilities and spinal injuries. JA16, JA40. Absent any reason to do so, as Mr. Goodman alleges, this was a malicious use of more than *de minimis* force.

2. *Sergeant Moissett and Deputies Diggs and Repass*

Defendants Moissett, Diggs, and Repass moved Mr. Goodman to the medical isolation unit later that day. They too used excessive force against him. During transit, Mr. Goodman ended up out of his wheelchair and on the floor.⁶ JA20, JA42. Sergeant Moissett responded by picking him up with "severe force," slamming his head into the concrete, and cursing at him. JA20, JA42. One of the officers put Mr. Goodman in handcuffs, JA20, JA42, and Sergeant Moissett and Deputy Diggs dragged him 100 yards across the concrete floor to a cell. JA20, JA40.

⁶ Mr. Goodman is unsure how he ended up on the floor. JA20.

The officers continued to abuse Mr. Goodman inside the cell. Deputy Diggs and Sergeant Moissett slammed his head into the concrete floor. JA20-21, JA43. As the deputies removed his handcuffs, Deputy Diggs placed his foot on Mr. Goodman's back. JA21, JA43. Deputy Repass stepped on him and then knelt on his neck as she dug her thumb into a pressure point behind his ear. JA17, JA44-45. Although Mr. Goodman told Deputy Repass about his cervical fusion and other neck surgeries, she ground his face into the floor with her knee on his neck. JA17-18, JA20, JA44-45. After the handcuffs were off, Deputy Repass placed her full weight on Mr. Goodman's left hand. JA21, JA44, JA91. The officers left him unconscious on the cell floor in a pool of blood, with a lacerated head and injuries to his hand that required surgery. JA18, JA 91, JA257.

Mr. Goodman suffered abuse so disproportionate to any conceivably legitimate need that a jury could reasonably infer each officer acted with malicious intent or for punitive purposes. *See Brooks*, 924 F.3d at 113-17 (citing *Whitley*, 475 U.S. at 321). Sergeant Moissett twice slammed Mr. Goodman's head into the concrete floor and, *after* he was handcuffed, dragged him 100 yards to a cell. Even crediting defendants' allegations that Mr. Goodman threw himself out of the wheelchair and refused to stand, *see* JA149 ¶ 8, a jury could find Sergeant Moissett's reaction so extreme and unwarranted that it was meant to punish a lack of cooperation, rather than to secure compliance. *See Brooks*, 924 F.3d at 115-16

(holding reasonable juror could find use of force malicious even when initially the inmate belligerently resisted officer's commands). Because Sergeant Moissett knew Mr. Goodman was disabled and could not stand without assistance, his violent response to Mr. Goodman's failure to stand when ordered to do so demonstrates he acted with malice and punitive intent. *See Telfair*, 868 F. Supp. at 1413.

None of these officers was ever alone with Mr. Goodman who, at fifty-seven and disabled, posed no physical threat or security risk that would justify a greater use of force. *See, e.g., Whitley*, 475 U.S. at 322-26 (discussing force used in response to a prison riot). Sergeant Moissett further showed malevolent intent by cursing at Mr. Goodman when he ended up on the floor. From this evidence, a jury could find Sergeant Moissett was frustrated and angry when Mr. Goodman disobeyed his orders to stand, and he reacted with violent force to punish Mr. Goodman.

Deputy Diggs' actions likewise raise an inference that he acted with malicious intent. Deputy Diggs assisted Sergeant Moissett dragging Mr. Goodman 100 yards down the hall and slamming him into the concrete floor, lacerating his head. JA21, 43. Mr. Goodman remained in handcuffs and posed no threat to the officers. JA21, JA43. Indeed, defendants admit Mr. Goodman was compliant once in the cell. JA147 ¶ 12. Deputy Diggs nonetheless slammed Mr. Goodman's head into the floor and stepped on his back. JA21, JA43; *see Brooks*, 924 F.3d at 113, 116-17 (holding

that a jury can find use of force malicious where defendants lacked a need to evade a security threat or induce compliance).

So too Deputy Repass. Her force caused a fully compliant Mr. Goodman “extreme pain.” JA 18, JA45, JA149 ¶12. As Deputy Diggs stepped on his back, Deputy Repass stepped on his neck and then ground his face in the floor with her knee on his neck. JA17-18, JA44-45. She placed her full weight on his left hand and at some point dug her thumb in a pressure point. JA17-18, JA44-45. She did this as he protested that he had had multiple surgeries there. JA17-18, JA20, JA44-45. That use of force necessitated medical attention, including outside consults and surgeries. JA19, JA47, JA91. The three defendants abandoned him unconscious and bleeding without medical attention. JA18, JA44. A jury could find this evidence demonstrates vindictive malice with the purpose of causing harm. *See Brooks*, 924 F.3d at 113, 116-17.

These facts, including Mr. Goodman’s undisputed injuries, also demonstrate that the force used against him was far from *de minimis*. *See Wilkins*, 559 U.S. at 39 (reversing conclusion that plaintiff’s allegations he was punched, kicked, choked, kneed, and body slammed did not involve more than *de minimis* force). Indeed, Mr. Goodman alleges a greater use of force—because defendants dragged him across the floor—than cases in which the Supreme Court has found error with findings of *de minimis* force. *See id.*; *Hudson v. McMillian*, 503 U.S. 1, 10 (1992) (holding that

blows directed at plaintiff, which caused bruises and swelling among other injuries, involved more than *de minimis* force).

The district court had to consider the sworn facts in the light most favorable to Mr. Goodman. *Anderson*, 477 U.S. at 255. Had it done so, it would have found that Mr. Goodman alleged material facts calling in question whether defendants' assault on Mr. Goodman was done maliciously, the "core judicial inquiry" in his Eighth Amendment claim. JA151; *see also Hudson*, 503 U.S. at 7. Summary judgment was improper. *See Anderson*, 477 U.S. at 248.

B. The District Court Erred by Not Considering Mr. Goodman's Verified Complaints

The district court never considered Mr. Goodman's verified complaints. Instead, it held it could not consider Mr. Goodman's unsworn opposition, and even if it could, the opposition insufficiently challenged defendants' "core facts." JA302. These conclusions are irrelevant because Mr. Goodman demonstrated a genuine dispute through his sworn verified complaints. *See supra* Section I.A. And the district court had a particular duty to examine the complaints carefully because Mr. Goodman was proceeding pro se. *See Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978) (collecting cases).

Mr. Goodman's verified complaints are "the equivalent of an opposing affidavit for summary judgment purposes" because they meet the requirements for an affidavit under Federal Rule of Civil Procedure 56(c) . *See Williams v. Griffin*,

952 F.2d 820, 823 (4th Cir. 1991) (a verified pleading may serve as an affidavit for the purposes of Rule 56(c)). To be verified, a complaint must contain a sworn statement indicating that its contents are true and correct and be based on personal knowledge. *World Fuel Servs.*, 783 F.3d at 516.

Mr. Goodman’s first two complaints—his original complaint and his first amended complaint—are verified and therefore the equivalent of affidavits. Both provide a detailed account based on his personal knowledge of what happened when defendants assaulted him. *See, e.g., Williams*, 952 F.2d at 823 (holding sworn complaint sufficiently set forth facts where prisoner wrote complaint from his own observations).

And he swore both complaints under penalty of perjury before a notary. JA22, JA48; *see Pfeil v. Rogers*, 757 F.2d 850, 859 (7th Cir. 1985) (noting an affidavit is “a statement reduced to writing and the truth of which is sworn to before someone who is authorized to administer an oath”). The notary seal on each states: “Sworn and subscribed before me this [date.]” JA22, JA48. Virginia rules require notaries to administer an oath under penalty of perjury before stamping a document as “sworn.”⁷ *See Strong v. Johnson*, 495 F.3d 134, 140 (4th Cir. 2007) (holding that

⁷ *See also* OFFICE OF THE SECRETARY OF THE COMMONWEALTH OF VIRGINIA, A HANDBOOK FOR VIRGINIA NOTARIES PUBLIC 13, 18-19 (2017), <https://www.commonwealth.virginia.gov/media/governorvirginiagov/secretary-of-the-commonwealth/pdf/2017-December-15-revised-Handbook-.pdf> (indicating that any notarial act that includes the word “sworn” requires the notary to have

“subscribed and sworn” language on the notarial act indicated that an oath had been administered). Mr. Goodman’s original complaint also includes the language, “I declare under penalty of perjury that all foregoing is true and correct”—a second and sufficient reason to find it is verified. *See* 28 U.S.C. § 1746.⁸

To be sure, Mr. Goodman’s second amended complaint (JA76) was not verified. But that does not affect the evidentiary significance of his verified complaints. This Court should conclude that the second amended complaint does not affect the evidentiary significance of Mr. Goodman’s verified complaints for two reasons. First, verified complaints retain their evidentiary value regardless of their status as a pleading. And second, the second amended complaint supplemented rather than negated the verified complaints.

A verified complaint retains its evidentiary significance even if not the operative pleading in a lawsuit. *See Beal v. Beller*, 847 F.3d 897, 901-02 (7th Cir. 2017). This Court has held that an amended complaint supersedes the original complaint as a pleading. *See, e.g., Young v. City of Mount Ranier*, 238 F.3d 567, 572 (4th Cir. 2001) (noting that an amended pleading “ordinarily supersedes the original one and renders it of no legal effect” (citation and internal quotation marks

administered an oath swearing that the statement is true and correct under penalty of perjury).

⁸ Because the pages of Mr. Goodman’s original complaint were entered in the electronic filing system out of order, the page with his penalty of perjury statement appears in the middle of his allegations rather than at the end.

omitted)). It has not addressed whether a verified complaint—and particularly one filed by a pro se plaintiff—retains its relevance as an affidavit when plaintiff later files an unverified amended complaint.

The evidentiary and pleading functions of a verified complaint are distinct. As two circuits have held, a verified complaint serves not only as a pleading but also as an affidavit because it “contains factual allegations that if included in an affidavit or deposition would be considered evidence, and not merely assertion.” *Beal*, 847 F.3d at 901 (quoting *Ford v. Wilson*, 90 F.3d 245, 246 (7th Cir. 1996)); see *Barnes v. Sea Haw. Rafting, LLC*, 889 F.3d 517, 532 (9th Cir. 2018) ; see also Fed. R. Civ. P. 65(b)(1)(A) (treating verified complaints as affidavits in temporary restraining order actions). Although superseded as pleadings, Mr. Goodman’s verified complaints retain their evidentiary value for summary judgment. See *Beal*, 847 F.3d at 901-02.

Even if an unverified complaint *can* negate the evidentiary significance of a verified complaint, as one circuit has held, it does not do so when the unverified complaint “incorporates by reference” the earlier verified pleading. See *King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994). Because Mr. Goodman’s second amended complaint (JA76) specifically refers to, adopts, and incorporates by reference his verified complaints, the second amended complaint does not negate their evidentiary

value. *See King*, 31 F.3d at 346; *see also West Run Student Housing Assocs, LLC v. Huntington Nat. Bank*, 712 F.3d 165, 171 (3d Cir. 2013).

The first sentence of the second amended complaint states: “Please be advised the following, is a resubmitted/modified copy of my amended complaint.” JA76. Mr. Goodman identified his only changes: Adding the defendants’ names that he had learned and adding remedies sought.⁹ JA76-77. The conclusion: “I pray my previous statements, may be used in addition to this revised complaint.” JA94. In addition, throughout both amended complaints, Mr. Goodman cites directly to the original complaint a total of nine times. JA37, JA39, JA42, JA43, JA85, JA87, JA89, JA90, JA92. Far from overriding his earlier complaints, Mr. Goodman sufficiently “refer[red] to” and “incorporated by reference” his previous complaints by articulating the changes he was making while alleging the same facts about abuse and injuries he suffered at the hands of defendants. *See, e.g., West v. Rieth*, 152 F. Supp. 3d 538, 542 n.11 (E.D. La. 2015); *Marceaux v. Lafayette City-Parish Consol. Gov’t*, 14 F. Supp. 3d 760, 770 (W.D. La. 2014).

Mr. Goodman alleged facts sufficient for a jury to find in his favor, creating a genuine dispute of material fact. Defendants, knowing Mr. Goodman was disabled, dragged him, slammed him into the ground, and stepped and kneeled on his body.

⁹ Mr. Goodman also stated on the cover page of his second amended complaint: “Please note same as sent July 2013 except defendants John & Jane Doe now named & relief-V.” JA78.

These acts of violence and Mr. Goodman's injuries demonstrate defendants maliciously used more than *de minimis* force. The district court should have considered Mr. Goodman's verified complaints and found genuine disputes of material fact on his excessive force claim.

II. MR. GOODMAN WAS ENTITLED TO DISCOVERY BEFORE ENTRY OF SUMMARY JUDGMENT

Even if this Court concludes that Mr. Goodman's sworn assertions do not raise a genuine dispute of material fact, it should reverse the district court's premature summary judgment. *See Ingle ex rel. Ingle v. Yelton*, 439 F.3d 191, 196-98 (4th Cir. 2006). District courts should "broadly favor[]" and "liberally grant[]" requests for discovery before summary judgment, and the failure to do so here was an abuse of discretion. *See McCray v. Md. Dep't of Transp.*, 741 F.3d 480, 483-84 (4th Cir. 2014) (citation omitted). In five years of litigation and in the face of fourteen motions seeking discovery, defendants have only disclosed their names and their destruction of all video footage showing their use of force. The district court abused its discretion because "summary judgment must be refused where the nonmoving party did not have the opportunity to discover information that is essential to his opposition." *Anderson*, 477 U.S. at 250 n.5; *see also McCray*, 741 F.3d at 483 (noting summary judgment before discovery puts non-moving party "into a fencing match without a sword or mask").

If this Court finds Mr. Goodman’s sworn testimony insufficient, he can only prove excessive force with his medical records, photographs of his injuries, and witness statements. The district court credited defendants’ claims they merely held Mr. Goodman’s arms and accessed a pressure point without causing him injury. *See* JA303 (calling Mr. Goodman’s lack of injuries “significant[.]”). But Mr. Goodman asserts that digital photographs and his medical records establish he suffered spinal and shoulder damage, bruising across his body, and injuries to his left hand requiring surgery. *See, e.g.*, JA282-83 (requesting this evidence), JA292 (same).¹⁰ These injuries would call defendants’ intent into question, showing they used an amount of force that “could [not] plausibly have been thought necessary.” *Whitley*, 475 U.S. at 321. Indeed, the district court doubly erred because summary judgment prior to discovery is “particularly inappropriate” where, as here “a case involves complex factual questions about intent and motive.” *Harrods Ltd. V. Sixty Internet Domain Names*, 302 F.3d 214, 247 (4th Cir. 2002). And Mr. Goodman had no other way to get this information because pro se parties need court approval of subpoenas. *See* E.D. Va. Local Civ. R. 45(a).

¹⁰ In addition to digital photographs and medical records, Mr. Goodman sought statements of an eyewitness who could further corroborate his account of defendants’ behavior and statements of a nurse who treated him after the incident. JA76, JA132, JA231. Mr. Goodman also sought statements from all VBCC officials about defendants’ use of force against him. JA96.

But that is not all. Mr. Goodman six times told the district court he needed this evidence. JA204, JA209, JA212, JA221, JA224, JA292. In granting summary judgment, the district court ignored the first five motions and summarily dismissed the sixth as moot. JA 306. This was error. *See Raynor v. Pugh*, 817 F.3d 123, 130 n.5 (4th Cir. 2016) (“Generally, a court should not grant summary judgment when, as here, outstanding discovery requests on material issues exist.”); *Williams v. Collier*, 357 F. App’x 532, 535 (4th Cir. 2009) (remanding when district court granted summary judgment without “addressing [nonmovant’s discovery] motions on their merits”).

Although the “proper course” for a nonmovant in Mr. Goodman’s position is to file a Rule 56(d) affidavit, this Court does not insist on that if the filings have “adequately informed the district court that the motion is pre-mature and that more discovery is necessary.” *Harrods Ltd.*, 302 F.3d at 244-45 (citing *First Chicago Int’l v. United Exch. Co.*, 836 F.2d 1375, 1380 (D.C. Cir. 1988)). This is “especially true” because Mr. Goodman was proceeding pro se. *Putney v. Likin*, 656 F. App’x 632, 638 (4th Cir. 2016) (reversing in similar circumstances). His opposition begins by emphasizing that “evidence of abuse” exists in the form of “medical records, photos, etc,” and that this “medical evidence” will prove he suffered “serious injury.” JA282. He explains: “[T]he medical records, digital photos, notes, [and other] medical evidence should be examined and *then* a ruling by the honorable court

[should issue].” *Id.* (emphasis added); *see also* JA283 (asking the court to “[quash or stay the defense motion for summary judgment” (emphasis added)). He also filed a motion for the district court to issue subpoenas for these medical records with his opposition, JA292, and the district court had five other discovery motions pending before it. *See First Chicago*, 836 F.2d at 1380-81 (holding that “outstanding discovery requests” placed district court on notice that plaintiffs needed discovery before summary judgment). What’s more, these motions sought the same evidence Mr. Goodman said he needed in his opposition, underlining the need for discovery and establishing his “good faith” objections to premature summary judgment. *Harrods Ltd.*, 302 F.3d at 244.

Indeed, the district court previously recognized that a “formal” Rule 56(d) affidavit was “unnecessary, especially given [Mr. Goodman’s] *pro se* status,” and denied summary judgment because Mr. Goodman had “not had the opportunity to discover potentially essential information.” JA197 & n.2 (citation omitted). Mr. Goodman has still not gotten discovery—the only thing that has changed since then is defendants’ admission they destroyed video footage. This Court has also “not always insisted on a Rule 56([d]) affidavit” where, as here, “fact-intensive issues, such as [defendants’] intent, are involved” and the district court did not rely on its absence. *Harrods Ltd.*, 302 F.3d at 244, 246 (finding it “unfair to penalize [non-movant] for failing to file the formal affidavit” especially because “the absence of a

Rule 56(d) affidavit did not figure in the [district] court's decision" to grant summary judgment). The district court committed reversible error by failing to consider Mr. Goodman's repeated motions for material discovery.

CONCLUSION

Mr. Goodman's sworn factual allegations directly contradict defendants' version of events. The district court erred in failing to consider them. And if this Court finds his alleged facts insufficient, the district court erroneously granted summary judgment before discovery. For the foregoing reasons, this Court should reverse summary judgment and remand for pre-trial discovery.

STATEMENT REGARDING ORAL ARGUMENT

Mr. Goodman respectfully requests oral argument pursuant to Federal Rule of Appellate Procedure 34(a) and Fourth Circuit Rule 34(a). This Court has not yet addressed whether an unverified amended complaint negates the evidentiary relevance of an earlier verified complaint where the amended complaint “incorporates by reference” the earlier pleading. *See, e.g., King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994). Additionally, oral argument will provide this Court with an opportunity to examine the factually and procedurally complex record.

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October 15, 2019

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 7835 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

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CERTIFICATE OF SERVICE

I, Erica Hashimoto, certify that on October 15, 2019, a copy of Appellant's Brief and Joint Appendix was served via the Court's ECF system on:

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Statutory Supplement

Federal Rules of Civil Procedure Rule 56

Rule 56. Summary Judgment

Effective: December 1, 2010

- (a) **Motion for Summary Judgment or Partial Summary Judgment.** A party may move for summary judgment, identifying each claim or defense--or the part of each claim or defense--on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.
- (b) **Time to File a Motion.** Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.
- (c) **Procedures.**
 - (1) ***Supporting Factual Positions.*** A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
 - (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
 - (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.
 - (2) ***Objection That a Fact Is Not Supported by Admissible Evidence.*** A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.
 - (3) ***Materials Not Cited.*** The court need consider only the cited materials, but it may consider other materials in the record.
 - (4) ***Affidavits or Declarations.*** An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.
- (d) **When Facts Are Unavailable to the Nonmovant.** If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:
 - (1) defer considering the motion or deny it;

- (2) allow time to obtain affidavits or declarations or to take discovery; or
 - (3) issue any other appropriate order.
- (e) **Failing to Properly Support or Address a Fact.** If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:
- (1) give an opportunity to properly support or address the fact;
 - (2) consider the fact undisputed for purposes of the motion;
 - (3) grant summary judgment if the motion and supporting materials--including the facts considered undisputed--show that the movant is entitled to it; or
 - (4) issue any other appropriate order.
- (f) **Judgment Independent of the Motion.** After giving notice and a reasonable time to respond, the court may:
- (1) grant summary judgment for a nonmovant;
 - (2) grant the motion on grounds not raised by a party; or
 - (3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.
- (g) **Failing to Grant All the Requested Relief.** If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact--including an item of damages or other relief--that is not genuinely in dispute and treating the fact as established in the case.
- (h) **Affidavit or Declaration Submitted in Bad Faith.** If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court--after notice and a reasonable time to respond--may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

CREDIT(S)

(Amended December 27, 1946, effective March 19, 1948; January 21, 1963, effective July 1, 1963; March 2, 1987, effective August 1, 1987; April 30, 2007, effective December 1, 2007; March 26, 2009, effective December 1, 2009; April 28, 2010, effective December 1, 2010.)

42 U.S.C.A. § 1983

§ 1983. Civil action for deprivation of rights

Effective: October 19, 1996

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

CREDIT(S)

(R.S. § 1979; Pub.L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284; Pub.L. 104-317, Title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853.)