

***** PUBLIC DOCKET *****

**U.S. District Court
Southern District of Indiana (Terre Haute)
CIVIL DOCKET FOR CASE #: 2:21-cv-00247-MPB-MJD**

ERVIN v. MARION COUNTY JAIL et al
Assigned to: District Judge Matthew P. Brookman
Referred to: Magistrate Judge Mark J. Dinsmore
Demand: \$300,000
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 06/21/2021
Jury Demand: Defendant
Nature of Suit: 555 Prisoner Petitions -
Prison Condition
Jurisdiction: Federal Question

Plaintiff**MORICE ERVIN**

represented by **MORICE ERVIN**
110724
WABASH VALLEY - CF
Wabash Valley Correctional Facility
6908 S. Old US Hwy 41
CARLISLE, IN 47838
PRO SE

V.

Defendant**PHILLIPS***Deputy*

represented by **Anthony W. Overholt**
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Defendant

MOENDS

Lt.

represented by **Anthony W. Overholt**
 (See above for address)
ATTORNEY TO BE NOTICED

Barry F. McGinley
 (See above for address)
ATTORNEY TO BE NOTICED

Mathew Rayman
 (See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
06/21/2021	<u>1</u>	CONSENT to Prisoner E-Service by MORICE ERVIN located at WVCF. Pursuant to General Order 2013-1, documents submitted by MORICE ERVIN to the court for filing will generate a Notice of Electronic Filing that will constitute official service upon registered users of CM/ECF. If any parties to the case are not registered CM/ECF users, the Clerk of the Court will mail the document via U.S. Postal Service on behalf of the inmate. NOTE: The E-Filing Program does not affect the obligation of other parties to serve copies of documents in accordance with the Federal Rules of Civil Procedure. (DJH) (Entered: 06/21/2021)
06/21/2021	<u>2</u>	COMPLAINT against AVERY, BAIG, BELL, BERTHELLETTE, MARION COUNTY JAIL, MATTERS, MOENDS, PHILLIPS, SHAKEY, SINCERE, SISCO, filed by MORICE ERVIN. (No fee paid with this filing) (Attachments: # <u>1</u> continuation pages for complaint)(DJH) (Entered: 06/21/2021)
06/21/2021	<u>3</u>	MOTION for Leave to Proceed in forma pauperis filed by Plaintiff, MORICE ERVIN. (Attachments: # <u>1</u> Certified Counselors Statement and Transaction History) (DJH) (Entered: 06/21/2021)
06/21/2021	<u>4</u>	MAGISTRATE JUDGE's NOTICE of Availability to Exercise Jurisdiction issued. (DJH) (Entered: 06/21/2021)
06/23/2021	<u>5</u>	NOTICE to Pro se Litigant - The following information is provided to pro se litigants to inform them about rules and procedures governing how they communicate with the Court. (TMC) (Entered: 06/23/2021)
07/12/2021	<u>6</u>	Order on In Forma Pauperis Status - The plaintiff's motion for leave to proceed in forma pauperis, dkt. <u>3</u> is denied. The plaintiff's inmate trust account certification reflects that he has sufficient funds to pay the \$402.00 filing fee for this action. The petitioner shall have through August 5, 2021, in which to pay the Four Hundred Two

		Dollar (\$402.00) filing fee to the clerk of this court. Signed by Judge James R. Sweeney II on 7/12/2021. (TMC) (Entered: 07/12/2021)
08/12/2021	7	ORDER TO PAY FILING FEE. The Court again ORDERS Mr. Ervin to pay the \$402.00 filing fee by September 10, 2021. Failure to meet this deadline will result in the dismissal of the action without further warning or ability to show cause. (SEE ORDER.) Signed by Judge James R. Sweeney II on 8/12/2021.(TPS) (Entered: 08/12/2021)
08/18/2021	8	RECEIPT #IP075411 for filing fee in the amount of \$402.00, paid by Plaintiff. (REO) (Entered: 08/18/2021)
10/05/2021	9	ORDER SCREENING THE COMPLAINT - Morice Ervin brings this lawsuit alleging unconstitutional conditions of confinement at Marion County Jail. Because Mr. Ervin is a prisoner, the Court must screen his complaint before directing service on the defendants. The complaint names Marion County Jail, Sgt. Sincere, Deputy Phillips, Deputy Baig, Sgt. Berthelette, Deputy Mathers, Deputy Shakey, Lt. Moends, Deputy Avery, Deputy Bell, and Deputy Sisco as defendants. Mr. Ervin seeks an award of damages. Mr. Ervin's Eighth Amendment conditions of confinement claims shall proceed against Lt. Moends and Deputies Phillips, Shakey, Bell, and Sisco. All other claims are dismissed. The clerk is directed pursuant to Fed. R. Civ. P. 4(c)(3) to issue process to defendants Lt. Moends, Deputy Phillips, Deputy Shakey, Deputy Bell, and Deputy Sisco. Process shall consist of the complaint, dks. 2 [2-1], applicable forms (Notice of Lawsuit and Request for Waiver of Service of Summons and Waiver of service of Summons), and this Order. The clerk is directed to terminate Marion County Jail, Sgt. Sincere, Deputy Baig, Sgt. Bethellette, Deputy Avery, and Deputy Mathers as defendants on the docket. Signed by Judge James R. Sweeney II on 10/5/2021.(TPS) (Entered: 10/06/2021)
10/06/2021	10	NOTICE of Lawsuit & Waiver Issued by Clerk upon 1) LT. MOENDS; 2) DEPUTY PHILLIPS; 3) DEPUTY SISCO; 4) DEPUTY BELL; 5)DEPUTY SHAKEY. (TPS) (Entered: 10/06/2021)
10/07/2021	11	Submission of Signed Waiver of Service of Summons by Morice Ervin, filed by Plaintiff MORICE ERVIN. (KAA) (Entered: 10/08/2021)
11/01/2021	12	NOTICE of Appearance by Mathew Rayman on behalf of Defendants BELL, MOENDS, PHILLIPS, SHAKEY, SISCO. (Rayman, Mathew) (Entered: 11/01/2021)
11/01/2021	13	WAIVER OF SERVICE Returned Executed, filed by SHAKEY, SISCO, MOENDS, BELL, PHILLIPS. SHAKEY waiver sent on 10/6/2021; SISCO waiver sent on 10/6/2021; MOENDS waiver sent on 10/6/2021; BELL waiver sent on 10/6/2021; PHILLIPS waiver sent on 10/6/2021. (Rayman, Mathew) (Entered: 11/01/2021)
11/12/2021	14	Mail Returned as undeliverable. 10 NOTICE of Lawsuit & Waiver Issued by Clerk sent to SHAKEY, Marion County Sheriff's Office. (AAS) (Entered: 11/18/2021)
11/12/2021	15	Mail Returned as undeliverable - Does not specify full name of deputy. 10 NOTICE of Lawsuit & Waiver Issued by Clerk sent to BELL, Marion County Sheriff's Office. (AAS) (Entered: 11/18/2021)
11/19/2021	16	MOTION for all Records - Video, filed by Plaintiff MORICE ERVIN. (AAS) (Entered: 11/19/2021)

12/06/2021	17	<i>Defendant's ANSWER to 2 Complaint</i> , filed by BELL, MOENDS, PHILLIPS, SHAKEY, SISCO.(Rayman, Mathew) (Entered: 12/06/2021)
12/15/2021	18	ORDER denying 16 Motion for All Records. However, Defendants shall consider Docket No. 16 to be a request for production, which shall be deemed served as of the date of this order; Defendants shall respond thereto as appropriate. Signed by Magistrate Judge Mark J. Dinsmore on 12/15/2021. (KAA) (Entered: 12/15/2021)
12/15/2021	19	ORDER SETTING PRETRIAL SCHEDULE AND DISCUSSING DISCOVERY IN PRISONER LITIGATION: This Order sets the schedule for how this action shall proceed. Part I sets forth the pretrial deadlines. Part II discusses various aspects of discovery. Facilitating the discovery process can be difficult, and this Order is issued in an effort to help explain and streamline the process for the parties. The parties should carefully read this Order. *SEE ORDER FOR ADDITIONAL INFORMATION*. Dispositive Motions due by 7/8/2022. Discovery due by 6/10/2022. Signed by Magistrate Judge Mark J. Dinsmore on 12/15/2021.(KAA) (Entered: 12/15/2021)
01/14/2022	20	NOTICE <i>Of Automatic Initial Extension Of Time</i> , filed by Defendants BELL, MOENDS, PHILLIPS, SHAKEY, SISCO (Rayman, Mathew) (Entered: 01/14/2022)
01/18/2022	21	NOTICE of Service of Initial Disclosures , filed by Defendants BELL, MOENDS, PHILLIPS, SHAKEY, SISCO. (Rayman, Mathew) (Entered: 01/18/2022)
03/09/2022	22	MOTION to Compel Discovery, filed by Plaintiff MORICE ERVIN. (AAS) (Entered: 03/09/2022)
03/09/2022	23	AFFIDAVIT in Support of Motion re 22 MOTION to Compel, filed by Plaintiff MORICE ERVIN. (AAS) (Entered: 03/09/2022)
03/09/2022	24	BRIEF/MEMORANDUM in Support re 22 MOTION to Compel, filed by Plaintiff MORICE ERVIN. (Attachments: # 1 Exhibit)(AAS) (Entered: 03/09/2022)
03/23/2022	25	RESPONSE in Opposition re 22 MOTION to Compel , filed by Defendants BELL, MOENDS, PHILLIPS, SHAKEY, SISCO. (Rayman, Mathew) (Entered: 03/23/2022)
03/23/2022	26	MOTION to Take Written Depositions, filed by Plaintiff MORICE ERVIN. (AAS) (Entered: 03/24/2022)
05/10/2022	27	MOTION <i>for Leave to Depose Plaintiff</i> , filed by Defendants BELL, MOENDS, PHILLIPS, SHAKEY, SISCO. (Attachments: # 1 Text of Proposed Order)(Rayman, Mathew) (Entered: 05/10/2022)
05/16/2022	28	ORDER ON DEFENDANTS' MOTION FOR LEAVE TO DEPOSE PLAINTIFF - granting 27 Motion. Defendants may coordinate with the Wabash Valley Correctional Facility to depose Plaintiff. Signed by Judge James R. Sweeney II on 5/16/2022. (KAA) (Entered: 05/17/2022)
05/16/2022	29	ORDER re 22 Plaintiff's Second MOTION to Compel filed by MORICE ERVIN. The defendants shall file a notice with the Court by June 3, 2022, stating that they have complied with Mr. Ervin's request for discovery, as the request appears in his second motion to compel. Alternatively, the notice may describe, in detail, their objections to producing this discovery. Signed by Magistrate Judge Mark J. Dinsmore on 5/16/2022.(TPS) Modified on 5/18/2022 (KAA). (Entered: 05/17/2022)

05/16/2022	30	ORDER denying as moot 26 Motion to Take Written Depositions. Mr. Ervin does not need the Court's permission to conduct a deposition by written questions. The Court is not able to pay the litigation expenses of civil litigants. Signed by Magistrate Judge Mark J. Dinsmore on 5/16/2022. (TPS) (Entered: 05/17/2022)
05/26/2022	31	NOTICE of Appearance by Anthony W. Overholt on behalf of Defendants BELL, MOENDS, PHILLIPS, SHAKEY, SISCO. (Overholt, Anthony) (Entered: 05/26/2022)
05/26/2022	32	NOTICE of Appearance by Barry F. McGinley on behalf of Defendants BELL, MOENDS, PHILLIPS, SHAKEY, SISCO. (McGinley, Barry) (Entered: 05/26/2022)
06/01/2022	33	NOTICE of Extension of Time to Prepare of Summary Judgment Motion, filed by Plaintiff MORICE ERVIN (TPS) (Entered: 06/01/2022)
06/01/2022	34	MOTION for Extension of Time to Prepare Motion for Summary Judgment, filed by Plaintiff MORICE ERVIN. (TPS) (Entered: 06/01/2022)
06/01/2022	35	MOTION for Leave to Depose JULIA A. MAYS, filed by Plaintiff MORICE ERVIN. (Attachments: # 1 Attachment)(TPS) (Entered: 06/01/2022)
06/01/2022	36	MOTION for Leave to Depose LYDIA BAYTON, filed by Plaintiff MORICE ERVIN. (Attachments: # 1 Attachment, # 2 Proposed Orders)(TPS) (Entered: 06/01/2022)
06/02/2022	37	MOTION for Extension of Time to 06/17/2022 to <i>Notify the Court Regarding Compliance with or Objection to Plaintiff's Second Motion to Compel</i> , filed by Defendants BELL, MOENDS, PHILLIPS, SHAKEY, SISCO. (Attachments: # 1 Text of Proposed Order Granting Extension of Time)(McGinley, Barry) (Entered: 06/02/2022)
06/17/2022	38	NOTICE to Plaintiff's Second Motion to Compel, filed by Defendants AVERY, BAIG, BELL, BERTHELLETTE, MARION COUNTY JAIL, MATTERS, MOENDS, PHILLIPS, SHAKEY, SINCERE, SISCO, re 24 Brief/Memorandum in Support. (Overholt, Anthony) (Entered: 06/17/2022)
06/29/2022	39	RESPONSE to Defendant's Objections, re 38 Notice (Other), filed by Plaintiff MORICE ERVIN. (KAA) (Entered: 06/29/2022)
07/07/2022	40	MOTION for Extension of Time to 8/9/22 and 9/6/22 , filed by Defendants BELL, MOENDS, PHILLIPS, SHAKEY, SISCO. (Attachments: # 1 Text of Proposed Order)(Overholt, Anthony) (Entered: 07/07/2022)
07/22/2022	41	NOTICE of Substitution of Appearance by Elise Bowling replacing <i>Anthony W. Overholt</i> on behalf of All Defendants (Bowling, Elise) (Entered: 07/22/2022)
07/22/2022	42	ORDER - Mr. Ervin's motion to compel surveillance video and grievance documents, dkt. 22 , is DENIED. The defendants' motion for an extension of time to file their Notice to Plaintiff's Second Motion to Compel, dkt. 37 , is granted to the extent that their Notice at dkt. 38 is deemed timely. See Order Signed by Magistrate Judge Mark J. Dinsmore on 7/22/2022. (KAA) (Entered: 07/25/2022)
07/22/2022	43	ORDER The parties have moved to extend the deadlines to conduct discovery and move for summary judgment. These motions, dkts. 34 and 40 , are GRANTED. Section I of the Court's Order Setting Pretrial Schedule, dkt. 19 at 4, is hereby amended as follows: Dispositive Motions due by 9/30/2022., Discovery due by

		9/6/2022. All other requirements of the Court's Order Setting Pretrial Schedule dkt. 19 remain in effect. Signed by Magistrate Judge Mark J. Dinsmore on 7/22/2022. (KAA) (Entered: 07/25/2022)
07/22/2022	44	ORDER denying 35 and 36 Motions to to depose non-parties. See Order. Signed by Magistrate Judge Mark J. Dinsmore on 7/22/2022. (KAA) (Entered: 07/25/2022)
08/10/2022	45	Submission of Letter to Counsel, filed by Plaintiff MORICE ERVIN. (LBT) (Entered: 08/11/2022)
09/01/2022	46	NOTICE of Service of Initial Disclosures <i>First Supplement</i> , filed by Defendants BELL, MOENDS, PHILLIPS, SHAKEY, SISCO. (Bowling, Elise) (Entered: 09/01/2022)
09/30/2022	47	MOTION for Summary Judgment , filed by Defendants BELL, PHILLIPS, SHAKEY, SISCO. (Attachments: # 1 Exhibit 1 - 9-11-15 Sentencing Order, # 2 Exhibit 2 - Deposition of Morice Ervin with exhibits, # 3 Exhibit 3 - 2-15-17 Petition for PCR 49G01-1907-PC-026686, # 4 Exhibit 4 - 3-31-21 PCR Transport Order 49D27-1907-PC-026686, # 5 Exhibit 5 - Affidavit of Tanesha Crear with exhibits, # 6 Exhibit 6 - Affidavit of Ricky Phillips, # 7 Exhibit 7 - Affidavit of John Livingston with exhibits, # 8 Exhibit 8 - Affidavit of Marvin Mullins, # 9 Exhibit 9 - Wellpath records, # 10 Exhibit 10 - 4-20-20 Petition for PCR 49D30-2004-PC-013996, # 11 Exhibit 11 - 4-5-21 Transportation Order 49D30-2004-PC-013996, # 12 Exhibit 12 - CCS 49D30-2004-PC-013996, # 13 Exhibit 13 - Affidavit of Jerry Shake, # 14 Exhibit 14 - Affidavit of Anthony Sisco)(Bowling, Elise) (Entered: 09/30/2022)
09/30/2022	48	NOTICE <i>Regarding Right to Respond to and Submit Evidence in Opposition to Motion for Summary Judgment</i> , filed by Defendants BELL, MOENDS, PHILLIPS, SHAKEY, SISCO (Attachments: # 1 Exhibit FRCP 56, # 2 Exhibit Local Rule 56-1) (Bowling, Elise) (Entered: 09/30/2022)
09/30/2022	49	BRIEF/MEMORANDUM in Support re 47 MOTION for Summary Judgment , filed by Defendants BELL, MOENDS, PHILLIPS, SHAKEY, SISCO. (Bowling, Elise) (Entered: 09/30/2022)
10/26/2022	50	MOTION for Extension of Time to Respond to 47 MOTION for Summary Judgment, filed by Plaintiff MORICE ERVIN. (Attachments: # 1 Exhibit)(TPS) (Entered: 10/26/2022)
10/27/2022	51	ORDER GRANTING MOTION FOR EXTENSION OF TIME - granting 50 Motion for Extension of Time to respond to defendants' motion for summary judgment. Mr. Ervin has through December 15, 2022, to file his response. Signed by Magistrate Judge Mark J. Dinsmore on 10/27/2022. (KAA) (Entered: 10/28/2022)
12/07/2022	52	RESPONSE re 47 MOTION for Summary Judgment . (KAA) (Entered: 12/07/2022)
12/14/2022	53	Submission of Exhibits re 52 Response, filed by Plaintiff MORICE ERVIN. (TPS) (Entered: 12/14/2022)
12/21/2022	54	REPLY in Support of Motion re 47 MOTION for Summary Judgment , filed by Defendants BELL, MOENDS, PHILLIPS, SHAKEY, SISCO. (Bowling, Elise) (Entered: 12/21/2022)
01/31/2023	55	NOTICE of Change of Attorney Information. Consistent with Local Rule 5-3, Anthony W. Overholt hereby notifies the Clerk of the court of changed contact information. (Overholt, Anthony) (Entered: 01/31/2023)

01/31/2023	56	NOTICE of Change of Attorney Information. Consistent with Local Rule 5-3, Elise Bowling hereby notifies the Clerk of the court of changed contact information. (Bowling, Elise) (Entered: 01/31/2023)
01/31/2023	57	NOTICE of Change of Attorney Information. Consistent with Local Rule 5-3, Barry F. McGinley hereby notifies the Clerk of the court of changed contact information. (McGinley, Barry) (Entered: 01/31/2023)
04/04/2023	58	NOTICE of Reassignment of Case to Judge Matthew P. Brookman. Judge James R. Sweeney II is no longer assigned to this case. Please include the new case number, 2:21-cv-247-MPB-MJD , on all future filings in this matter. (LBT) (Entered: 04/04/2023)
05/17/2023	59	NOTICE of Substitution of Appearance by Anthony W. Overholt replacing <i>Elise C. L. Bowling</i> on behalf of BELL, MOENDS, PHILLIPS, SHAKEY, SISCO (Overholt, Anthony) (Entered: 05/17/2023)
02/28/2024	60	ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT: The Defendants' motion for summary judgment, dkt. 47 , is granted in part and denied in part. No evidence supports any claims against Defendants Shake, Bell, or Sisco going forward, and all claims against them are dismissed. The clerk is directed to terminate Defendants Shake, Bell, and Sisco as defendants on the docket. No partial final judgment shall issue at this time. As to Defendants Mullins and Phillips, Plaintiff's claims against them related to the sanitarianess of his cells at MCJ shall proceed. Those claims will be resolved through settlement or at trial. The Court intends to recruit counsel to represent Plaintiff through the remainder of the action. The clerk is directed to include a form motion for assistance recruiting counsel with Plaintiff's copy of this order. He will complete and return the form or notify the Court that he wishes to continue without a lawyer no later than March 29, 2024. The Magistrate Judge is requested to set the matter for a telephonic status conference once recruited counsel has appeared or if Plaintiff does not pursue a request for counsel. See Order for details. Signed by District Judge Matthew P. Brookman on 2/28/2024. (Attachments: # 1 Blank Form Motion for Counsel) (LF) (Entered: 02/28/2024)
03/29/2024	60 61	MOTION to Appoint Counsel, filed by Plaintiff MORICE ERVIN. (Attachments: # 1 Exhibit, # 2 Envelope)(TPS) (Entered: 04/02/2024)
04/03/2024	62	SCHEDULING ORDER - Final Pretrial Conference set for 7/10/2024 at 9:00 AM (Eastern Time) in room #288, United States Courthouse, 46 East Ohio Street, Indianapolis, Indiana before District Judge Matthew P. Brookman. Jury Trial set for 7/29/2024 at 9:00 AM (Eastern Time) in room #349, United States Courthouse, 46 E. Ohio Street, Indianapolis, Indiana before District Judge Matthew P. Brookman. Signed by District Judge Matthew P. Brookman on 4/3/2024. (BAA) (Entered: 04/04/2024)

Case #: 2:21-cv-00247-MPB-MJD