

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

RICHARD HENLEY, #123 127,	*	
Plaintiff,	*	
v.	*	2:09-CV-55-WHA
		(WO)
SEVEN MCGRIFF, <i>et al.</i> ,	*	
Defendants.	*	

**ORDER AND RECOMMENDATION OF THE MAGISTRATE JUDGE**

The above-captioned action was filed on January 22, 2009. Plaintiff challenges matters associated with the parole consideration process. After reviewing Plaintiff's complaint, the undersigned is persuaded that Plaintiff is actually attempting to amend a complaint he previously filed with the court on December 19, 2008 as he was directed to do by order entered January 9, 2009. *See Henley v. Ala. Bd. of Pardons and Paroles, et al.*, Civil Action No. 2:08-CV-1004-WKW (Doc. No. 6). The subject matter of the instant action is identical to the subject matter in Civil Action No. 2:08-CV-1008-WKW.

In light of the foregoing, the court finds it appropriate to recommend that the instant complaint be dismissed. The court will also direct the Clerk to docket Plaintiff's January 22, 2009 complaint as an amended complaint in Civil Action No. 2:08-CV-1004-WKW. Accordingly, it is

ORDERED that Document Number 1 filed in the instant action is CONSIDERED an amended complaint which Plaintiff intended to file in Civil Action No. 2:08-CV-1004-WKW, *Henley v. Ala. Bd. of Pardons and Paroles, et al.*

Based on the foregoing, it is the RECOMMENDATION of the Magistrate Judge that the instant complaint be DISMISSED without prejudice.

The Clerk is DIRECTED to make a copy of the complaint filed in the instant action, file the copy of said pleading in Civil Action No. 2:08-CV-1004-WKW, and docket said pleading as an amendment in that case. The Clerk is further DIRECTED to file a copy of this order in Civil Action No. 2:08-CV-1004-WKW.

It is further

ORDERED that the parties are DIRECTED to file any objections to the Recommendation on or before February 9, 2009. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which a party objects. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar the party from a *de novo* determination by the District Court of issues covered in the report and shall bar the party from attacking on appeal factual findings in the report accepted or adopted by the District Court except upon grounds of plain

error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5<sup>th</sup> Cir. 1982). *See Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11<sup>th</sup> Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11<sup>th</sup> Cir. 1981) (*en banc*), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

Done, this 26<sup>rd</sup> day of January 2009.

/s/ Wallace Capel, Jr.  
WALLACE CAPEL, JR.  
UNITED STATES MAGISTRATE JUDGE