

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

WALTER EARL WILLIAMS, #131113,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 2:13-CV-512-WHA
	)	(WO)
	)	
NURSE PHELPS,	)	
	)	
Defendant.	)	

**ORDER**

The Magistrate Judge has reviewed each of the special reports and supporting evidentiary materials filed by the defendants and the responses thereto filed by the plaintiff. In accordance with the standing procedures of the court, it is

ORDERED that on or before April 4, 2016 the plaintiff may file an additional response to the written reports filed by the defendant. *The plaintiff is advised that he is NOT required to file any response to this order and, if he does file a response, he should not repeat arguments previously submitted to the court in any prior response to the defendant's reports.*

As indicated herein, at some time in the future the court may treat the defendant's reports and the plaintiff's response as a dispositive motion and response.<sup>1</sup> Thus, in filing a response to the defendant's reports the plaintiff should not rely only on his or her unsworn pleadings but should respond by filing affidavits, sworn/verified declarations or statements

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<sup>1</sup>Thus, in preparing a response to the special reports filed by the defendant the plaintiff should refer to the requirements of Rule 56, *Federal Rules of Civil Procedure*.

made under penalty of perjury and other evidentiary materials developed through discovery or other appropriate means and which set forth specific facts demonstrating there is a genuine issue of material fact for trial in this case.<sup>2</sup> Failure to file affidavits or statements/declarations under penalty of perjury or other evidentiary materials may result in this court accepting the defendants' evidence as true. If documents are referred to in the opposing affidavits/statements under penalty of perjury and have not been previously filed with the court, sworn or certified copies of those papers must be attached to the affidavits/sworn statements or served with them.

The parties are hereby notified that, **unless within ten (10) days from the date of this order a party files a response in opposition which presents sufficient legal cause why such action should not be undertaken**, upon the expiration of the time for the plaintiff to file a response as allowed by this order, the court may at any time thereafter and **without further notice to the parties** (1) treat the special reports and any supporting evidentiary materials as a motion for summary judgment and (2) after considering any response as allowed by this order, rule on the motion for summary judgment in accordance with the law.

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<sup>2</sup>An affidavit is a statement in writing sworn to by the affiant under oath or on affirmation before a notary public or other authorized officer. If a notary/authorized officer is not available, the plaintiff may support his response with a statement made under penalty of perjury as allowed by well established federal law. See 28 U.S.C. § 1746 (“Whenever ... any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same ..., such matter may, with like force and effect, be supported, evidenced, established, or proved by the ... declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form ... If executed within the United States, its territories, possessions, or commonwealths: ‘I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)’.”). The affidavit or certified/verified statement **must be made on personal knowledge**, set forth such facts as would be admissible in evidence, and show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.

The parties are advised that the Magistrate Judge, after reviewing all of the pleadings and evidence, may issue a recommendation on the motion for summary judgment without there being an evidentiary hearing.

DONE this 23rd day of March, 2016.

/s/ Wallace Capel, Jr.  
UNITED STATES MAGISTRATE JUDGE