

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>GEORGE L. GUSHINIERE, III,</b>	)	
	)	
<b>Plaintiff,</b>	)	
<b>vs.</b>	)	<b>CIVIL ACTION NO. 07-0464-CG-C</b>
	)	
<b>MOBILE COUNTY METRO JAIL,</b>	)	
	)	
<b>Defendant.</b>		

**ORDER**

This matter is before the court on the report and recommendation of the Magistrate Judge (Doc. 31), plaintiff’s objection to the report and recommendation (Doc. 32), and plaintiff’s motion to amend (Doc. 33). The Magistrate Judge recommended that defendant’s motion to dismiss (Doc. 21) be granted and that the claims against the Mobile County Metro Jail be dismissed, pursuant to 28 U.S.C. § 1915(e)(2)(B)(I) and (ii), because the claims are either frivolous or fail to state a claim upon which relief can be granted. Upon a de novo review of those portions of the report and recommendation to which objection is made, the court agrees with the findings of the Magistrate Judge and finds that the Mobile County Metro Jail is due to be dismissed from this action.

The Magistrate Judge found the claim frivolous because the Mobile County Metro Jail is a subdivision of a sheriff’s department and is, therefore, not a legal entity that can be sued. Plaintiff’s objection acknowledges that the Mobile County Metro Jail is immune from suit and requests that petitioner be allowed to amend his complaint to add other defendants. Accordingly, the court will adopt the Magistrate’s report and recommendation and dismiss Mobile County Metro Jail as a defendant. However, the court will allow plaintiff to amend his complaint to assert claims against the defendants named in the proposed amended complaint. The court notes

that the proposed amended complaint is not signed by plaintiff, but appears to be a copy of plaintiff's original complaint, which was signed by plaintiff's former counsel. Because plaintiff is proceeding pro se, he must personally sign the amended complaint. If plaintiff wishes to continue with his case and proceed against these defendants, he must file a signed amended complaint that asserts all of his claims against all defendants he wishes to sue. Plaintiff is advised that the amended complaint should not include the Mobile County Metro Jail as a defendant, as that entity will be dismissed by this order. No further amendments will be allowed.

### CONCLUSION

After due and proper consideration of all portions of this file deemed relevant to the issues raised, and a de novo determination of those portions of the report and recommendation to which objection is made, the report and recommendation of the Magistrate Judge made under 28 U.S.C. § 636(b)(1)(B) is **ADOPTED** as the opinion of this court. It is **ORDERED** that the motion of the Mobile County Metro Jail to dismiss (Doc. 21) is **GRANTED** and **Mobile County Metro Jail** is hereby **DISMISSED with prejudice** pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) because the claim is frivolous.

It is **FURTHER ORDERED** that plaintiff's motion to amend (Doc. 33) is **GRANTED** and plaintiff is **ORDERED** to file, on or before **September 23, 2008**, a complete and signed amended complaint which does not name Mobile County Metro Jail as a defendant.

**DONE and ORDERED** this 8<sup>th</sup> day of September, 2008.

/s/ Callie V. S. Granade  
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CHIEF UNITED STATES DISTRICT JUDGE