

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
NORTHERN DIVISION**

**NOE CARDOZA  
ADC #151088**

**PLAINTIFF**

**V.**

**CASE NO. 1:11CV00070-DPM-BD**

**FERGUSON, *et al.***

**DEFENDANTS**

**ORDER**

The Defendants have filed a motion for summary judgment and a motion to dismiss. (Docket entries #109, #113) The Court afforded Mr. Cardoza the opportunity to respond to the motion for summary judgment (#112), but he has not done so.

A review of the docket sheet, however, indicates that it is questionable whether Mr. Cardoza received the Court's Order directing a response.<sup>1</sup> (#112) The docket sheet erroneously shows that Mr. Cardoza is represented by Defendants' counsel. That obviously is not the case. The Clerk is directed to correct the docket to show that Mr. Cardoza is proceeding pro se.

It appears that the Order directing Mr. Cardoza to respond was sent to Defendants' counsel, but not to Mr. Cardoza. Accordingly, Mr. Cardoza should be given a fair chance to respond to Defendants' motion for summary judgment.

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<sup>1</sup> The motion to dismiss is based solely on Mr. Cardoza's failure to comply with the Court's Order directing Mr. Cardoza to respond to the motion for summary judgment. (#113) Mr. Cardoza is not required to respond to the motion for summary judgment, and the Court will not dismiss this case based on the fact that no response was filed. However, the Defendants' Statement of Undisputed Facts may be deemed as true if there is no response.

If Mr. Cardoza wishes to file a response, it must be filed within fourteen (14) days of this Order.<sup>2</sup> The response may include opposing affidavits that Mr. Cardoza or others have signed. Affidavits are sworn statements, so they must be either notarized or declared under penalty of perjury (see 28 U.S.C. § 1746). Unsworn statements will not be considered in deciding the motion for summary judgment. And to be considered, an affidavit must be based on the personal knowledge of the person signing it.

If Mr. Cardoza files a response, he must also file a separate, short statement setting forth the disputed facts that he believes must be decided at a trial. See Local Rule 56.1, Rules of the United States District Court for the Eastern District of Arkansas.

DATED this 12th day of December, 2012.



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UNITED STATES MAGISTRATE JUDGE

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<sup>2</sup> Local Rule 5.5(c)(2) includes requirements for parties who are not represented by counsel. They must: promptly notify the Clerk and the other parties in the case of any change in address; monitor the progress of the case and to prosecute or defend the case diligently; sign all pleadings and include a current address, zip code, and telephone number; and be familiar with and follow both Local Rules and the Federal Rules of Civil Procedure. Any plaintiff not represented by counsel must respond to communications from the Court within thirty (30) days, or the case can be dismissed.