

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

**JODA DARR LEE LANE
ADC #601078**

PLAINTIFF

V.

CASE NO. 2:09CV00049-BSM-BD

NORTON, *et al.*

DEFENDANTS

RECOMMENDED DISPOSITION

I. Procedure for Filing Objections:

The following Recommended Disposition has been sent to United States District Judge Brian S. Miller. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date you receive the recommendation. A copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

Mail your objections and "Statement of Necessity" to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

II. Background:

On May 4, 2009, Plaintiff filed this lawsuit pro se under 42 U.S.C. § 1983 (docket entry #1). Plaintiff was granted *in forma pauperis* status by Order of August 21, 2009 (#12). In that Order, Plaintiff was also instructed to file an Amended Complaint within 20 days of the Order and (a) specifically name each Defendant whom he intends to sue; (b) state specific facts explaining how each named Defendant acted to deny Plaintiff his rights; (c) state whether each Defendant is sued in an individual or official capacity, or both; (d) state whether he filed a grievance based on the facts presented in the Complaint; and (e) state the specific relief requested. Plaintiff was notified that failure to timely comply with a Court order could result in dismissal of his case (#2, #12).

Plaintiff failed to file an Amended Complaint on or before September 10, 2009, as ordered. Accordingly, on September 23, 2009, this Court recommended dismissal of Plaintiff's Complaint under Local Rule 5.5(c)(2) for failure to comply with the Court's Order (#14). Plaintiff filed an Amended Complaint on October 1, 2009 (#16). For that reason, the District Court did not dismiss this case.

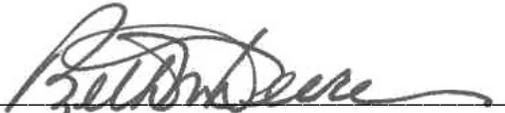
Plaintiff's Amended Complaint was screened in accordance with 28 U.S.C. § 1915A. On October 20, 2009, this Court recommended that the claims against Defendants Parker, Crumpton, Williams, Outlaw, and the Arkansas Department of Correction be dismissed with prejudice, and that Plaintiff be allowed to proceed on his claim that Defendant Norton failed to protect him. However, because Plaintiff

specifically states that he brought this lawsuit against Defendants in their official capacity only, this Court recommended that Plaintiff file a Second Amended Complaint so as to adequately state his claim against Defendant Norton in his individual capacity (#20). The Court specifically instructed Plaintiff that if he sought to pursue his claim against Defendant Norton, he must file a Second Amended Complaint raising this claim against Defendant Norton in his individual capacity. The District Court adopted that recommendation by Order of November 16, 2009 (#23). Plaintiff's Second Amended Complaint was due on or before December 7, 2009; however, it has not been filed. As the record stands, Plaintiff has failed to state a claim against Defendant Norton in his individual capacity, and this lawsuit cannot proceed.

III. Conclusion:

The Court recommends that the District Court dismiss Plaintiff's Amended Complaint without prejudice, under Local Rule 5.5(c)(2), for failure to comply with the Court's Order of November 16, 2009 (#23).

DATED this 21st day of December, 2009.


UNITED STATES MAGISTRATE JUDGE