

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

TED M. CARTWRIGHT
ADC #137787

PLAINTIFF

V.

2:09CV00167 JLH/JTR

ARKANSAS DEPARTMENT OF CORRECTION, et al.

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

INSTRUCTIONS

The following recommended disposition has been sent to United States Chief District Judge J. Leon Holmes. 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 Clerk no later than fourteen (14) days from the date of the findings and recommendations. The 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.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the United States District Judge, you must, at the same time that you file your written objections, include a "Statement of Necessity" that sets forth the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence to be proffered at the requested hearing before the United States District Judge was not offered at the hearing before the Magistrate Judge.

3. An offer of proof setting forth the details of any testimony or other evidence (including copies of any documents) desired to be introduced at the requested hearing before the United States District Judge.

From this submission, the United States District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

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

I. Discussion

Plaintiff, Ted M. Cartwright, who is a prisoner in the Arkansas Department of Correction, has filed a *pro se* § 1983 Complaint. *See* docket entry #2. On December 1, 2009, the Court entered an Order directing Plaintiff to file an Amended Complaint containing specific information needed to complete the screening function mandated by 28 U.S.C. § 1915A. *See* docket entry #4. Instead of doing so, Plaintiff filed an Amended Complaint raising numerous new factually and legally distinct claims involving several individual Defendants. *See* docket entry #7.

Because the Amended Complaint violated the December 1, 2009 Order, Fed. R. Civ. P. 8, and Fed. R. Civ. P. 20, the Court entered an Order that: (1) struck the Amended Complaint from the record; and (2) gave Plaintiff a *final* opportunity to file a Substituted Complaint containing only claims which arose out of the same transaction or occurrence, and involved common questions of law or fact; and (3) made it clear that, in the Substituted Complaint, Plaintiff must name only the Defendants involved in those related claims, clarify how each named Defendant personally participated in each related claim, and clearly and concisely set forth the facts giving rise to each

related claim. *See* docket entry #10.

Instead of complying with the instructions in that Order, Plaintiff has filed a Response stating, without explanation, that his various legally and factually distinct claims should be considered in one case. *See* docket entry #12-2. Additionally, he asserts that the Court should be able to “figure it out [because] you have been to law school.” *Id.*

Plaintiff’s Response is a direct violation of the January 13, 2010 Order, and a clear indication that Plaintiff does not intend to comply with the instructions of this Court. As a result, despite having been given two opportunities to do so, he has failed to file a proper Complaint. Accordingly, this action should be dismissed, without prejudice.

II. Conclusion

IT IS THEREFORE RECOMMENDED THAT:

1. Pursuant to Local Rule 5.5(c)(2), this case be DISMISSED, WITHOUT PREJUDICE, due to Plaintiff’s repeated failures to comply with the Orders of this Court. *See* docket entries #4 and #10.

2. The Court CERTIFY, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from any Order adopting this Recommended Disposition would not be taken in good faith.

Dated this 11th day of February, 2010.


UNITED STATES MAGISTRATE JUDGE