

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

GUY CLAYTON BARNES,  
ADC #93209

PLAINTIFF

v.

2:10-cv-00101-JLH-JTK

ARKANSAS DEPARTMENT OF  
CORRECTION, et al.

DEFENDANTS

**ORDER**

This matter is before the Court on Plaintiff's Motion for Sanctions (Doc. No. 55). Defendants filed a Response in opposition to the Motion (Doc. No. 60).

Plaintiff is a state inmate incarcerated at the Randall Williams Correctional Facility of the Arkansas Department of Correction (ADC). He filed this Motion, complaining that Defendants did not provide him adequate notice prior to taking his deposition on June 10, 2011. Plaintiff states Defendants violated the Federal Rules by taking a deposition on short notice, since notice was not mailed to him until June 3, 2011, and he did not receive the notice until June 4, 2011.

In their Response, Defendants state Plaintiff's reliance on FED.R.CIV.P. 32(a)(5) is misplaced, because Plaintiff initially received notice of the fact of the deposition on April 19, 2011, and later received notice of the actual date on June 4, 2011. Furthermore, Defendants state Plaintiff did not file a motion for a protective order, did not seek to have his deposition taken at an alternative time or place, and never objected to the notice at the time his deposition was taken.

FED.R.CIV.P. 32(a)(5) provides, "A deposition must not be used against a party who, having received less than 14 days' notice of the deposition, promptly moved for a protective order under Rule 26(c)(1)(B)...." In this particular case, Plaintiff did not file a motion for a protective order after receiving notice of the date of his deposition. The current motion was filed five days after his

deposition was taken. The Court also notes that Defendants received permission from this Court to take Plaintiff's deposition, by Order dated April 19, 2011. Finally, the Plaintiff does not allege in his Motion how he was harmed by the taking of his deposition. Accordingly,

IT IS, THEREFORE, ORDERED that Plaintiff's Motion for Sanctions (Doc. No. 55) is DENIED.

IT IS SO ORDERED this 1st day of July, 2011.

A handwritten signature in black ink, appearing to read 'J. Kearney', is written above a horizontal line.

JEROME T. KEARNEY  
UNITED STATES MAGISTRATE JUDGE