

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

PRENTIS RUPERT

PLAINTIFF

V.

3:17CV00092 DPM/JTR

KEITH BOWERS, Administrator; and
CASEY GIBSON, Correctional Officer,
Craighead County Detention Center, et al.

DEFENDANTS

ORDER

There are two non-dispositive matters pending in this *pro se* § 1983 action, which the Court will address separately.

I. Plaintiff's Motion for Leave to File a Third Amended Complaint

Plaintiff has filed a Motion for Leave to file a Third Amended Complaint that renews his previously dismissed claims against Sheriff Marty Boyd. *Docs. 19 & 27*. Defendants have not objected to the Motion, and the time for doing so has expired. *See* Local Rule 7.2(b) & (f). Additionally, the Court concludes, *for screening purposes only*, that Plaintiff has now pled a viable claim against Boyd. *See* 28 U.S.C. § 1915A. Accordingly, the Motion for Leave to File a Third Amended Complaint is granted.

II. Defendants' Motion for Summary Judgment

Defendants have filed a Motion for Summary Judgment on the Issue of Exhaustion, a Brief in Support, and a Statement of Undisputed Facts. *Docs. 31, 32, & 33.* Plaintiff has a right to file a Response to that Motion.

At the summary judgment stage, a plaintiff cannot rest upon mere allegations and, instead, must meet proof with proof. *See Fed. R. Civ. P. 56(e).* This means that Plaintiff's Response should include his legal arguments, as well as affidavits,¹ prison records, or other evidence establishing that there is a genuine issue of material fact that must be resolved at a hearing or trial. Furthermore, pursuant to Local Rule 56.1, Plaintiff's Response must be accompanied by a separate document captioned "Statement of Disputed Facts," which specifically identifies: (a) any disagreement he has with the numbered factual assertions in Defendants' Statement of Undisputed Facts² (*Doc. 31*); and (b) any other disputed facts that he believes must be resolved at a hearing or trial.

¹ The affidavit must be based upon the personal knowledge of the person executing the affidavit *and must be either*: (1) sworn and subscribed to by a notary public; or (2) executed under penalty of perjury, as provided for by 28 U.S.C. § 1746.

² If Plaintiff disputes any of the facts in Defendants' Statement of Undisputed Facts, he *must*: (1) identify *each numbered paragraph* that contains the fact he disputes; (2) explain *why* he disputes the fact in that paragraph; and (3) refers to, by docket and exhibit number, the evidence he relies on to support his version of the disputed fact. For example:

1. Admitted
2. Disputed. The incident took place on 1-1-17 in the cafeteria. *Doc. 10, Ex. 5.*

Finally, if Plaintiff intends to rely on documents that have been previously filed in the record, he must specifically refer to those documents by docket number and page. The Court will not sift through the file to find support for Plaintiff's factual contentions. *See Crossley v. Georgia-Pacific, Corp.*, 355 F.3d 1112, 1113-14 (8th Cir. 2004) (affirming the grant of summary judgment because a plaintiff failed to properly refer to specific pages of the record that supported his position).

III. Conclusion

IT IS THEREFORE ORDERED THAT:

1. Plaintiff's Motion for Leave to File a Third Amended Complaint (*Doc. 27*) is GRANTED, and the Clerk is instructed to file a copy of that Motion as "Plaintiff's Third Amended Complaint."
2. The Clerk is instructed to prepare a summons for Sheriff Marty Boyd and the U.S. Marshal is directed to serve the summons, Complaint, Amended Complaint, Second Amended Complaint, Third Amended Complaint, and this Order on him without prepayment of fees and costs and security therefor.
3. Plaintiff has until and including **November 13, 2017**, to file a Response to Defendants' Motion for Summary Judgment and a separate Statement of Disputed Facts that comply with Fed. R. Civ. P. 56, Local Rule 56.1, and the instructions in this Order.

4. Plaintiff is advised that the failure to *timely and properly* file a Response and Statement of Disputed Facts will result in: (a) all of the facts in Defendants' Statement of Undisputed Facts being deemed admitted by Plaintiff, pursuant to Local Rule 56.1(c); and (b) the possible dismissal of this action, without prejudice, pursuant to Local Rule 5.5(c)(2).

Dated this 12th day of October, 2017.



UNITED STATES MAGISTRATE JUDGE