

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

CECIL EDWARDS, JR.,
ADC #601363

PLAINTIFF

V.

4:10CV02042 BSM/JTR

KARL BYRD,
Sheriff, Faulkner County, et al.

DEFENDANTS

ORDER

I. Introduction

Plaintiff, Cecil Edwards, Jr., has filed a Motion to Intervene seeking the Court’s permission to add five plaintiffs to this action.¹ See docket entry #14. The Court concludes that the Motion is more properly characterized as a Motion for Leave to File a Third Substituted Complaint. For the following reasons, the Motion will be granted.

II. Discussion

On April 8, 2011, Edwards filed a Second Amended/Substituted Complaint alleging that, while he was a pretrial detainee at the Faulkner County Detention Center (“FCDC”), Defendants used excessive force, racially discriminated against him, and

¹ Edwards was *pro se* when he commenced this action. He subsequently retained counsel, who filed a Second Amended/Substituted Complaint on his behalf.

denied him adequate medical care in connection with a riot that occurred on October 24, 2010. *See* docket entry #13. According to Edwards, Defendants' actions constituted a violation of the United States Constitution, the Arkansas Constitution, and the Arkansas Civil Rights Act. *Id.*

On April 29, 2011, Allen Merrick, Cleveland Smith, Kelcey Perry, Akemela Burton, and Darrell Manning filed a Motion seeking the Court's permission to intervene in Edwards' lawsuit.² *See* docket entry #14. These five individuals allege that they were pretrial detainees in the same pod as Edwards, and that they were also beaten, denied adequate medical care, and racially discriminated against when Defendants responded to the October 24, 2010 riot. *Id.*

On May 26, 2011, the Court entered an Initial Scheduling Order directing Defendants to file a Response to the Motion to Intervene on or before June 8, 2011. *See* docket entry #21. Defendants did *not* do so.

Local Rule 7.2(f) provides that: "The failure to timely respond to any nondispositive motion . . . shall be an adequate basis, without more, for granting the relief sought in said motion." Additionally, the Court concludes that there is good cause for granting the Motion as the claims are legally related and arise out of the same nucleus of facts. *See* Fed. R. Civ. P. 15(a)(2) (providing that permission to

² These five individuals are also represented by Edwards' attorney.

amend "shall be freely given when justice so requires").

Finally, the Court must address payment of the \$350 filing fee. On January 4, 2011, the Court granted Edwards permission to proceed *in forma pauperis* and accessed an initial partial filing fee of \$1.17. *See* docket entry #3; *see also* 28 U.S.C. § 1915(b) (allowing a prisoner, who has been granted permission to proceed *in forma pauperis*, to pay the filing fee in monthly installments). However, the Court's records demonstrate that none of the \$350 filing fee has been paid at this time.

Plaintiffs, collectively, must pay the \$350 filing fee. Accordingly, the Court will give Burton, Manning, Smith, Merrick, and Perry thirty days to either pay the \$350 filing fee in full or file *separate* Applications to Proceed *In Forma Pauperis*.

III. Conclusion

IT IS THEREFORE ORDERED THAT:

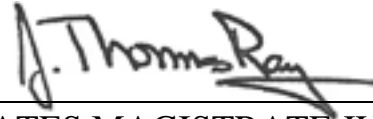
1. The Motion to Intervene, which has been construed as Plaintiff's Motion for Leave to File a Third Substituted Complaint (docket entry #14), is GRANTED.
2. Pursuant to Local Rule 5.5(e), Plaintiffs shall file their "Third Substituted Complaint" **within fourteen days of the entry** of this Order.³
3. The Clerk is directed to send Plaintiff's counsel an Application to

³ The Third Substituted Complaint *must* state, if applicable, each Plaintiff's place of incarceration and institutional number.

Proceed *In Forma Pauperis*, along with a prisoner calculation sheet.

4. Plaintiff's Burton, Manning, Smith, Merrick, and Perry must, **within thirty days of the entry of this Order**, either: (1) pay the \$350 filing fee in full; or (2) file *separate* Applications to Proceed *In Forma Pauperis*, along with separate prisoner calculation sheets, if applicable.

Dated this 21st June, 2011.

A handwritten signature in black ink that reads "J. Thomas Ray". The signature is written in a cursive style with a long horizontal stroke at the end.

UNITED STATES MAGISTRATE JUDGE