

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

CRAIG STIFF,
ADC #111330

PLAINTIFF

v.

5:09CV00092JMM/HLJ

ROBERT MOREHEAD, et al.

DEFENDANTS

ORDER

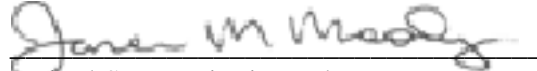
By Order dated April 30, 2009 (DE #5), this Court granted plaintiff's application to proceed in forma pauperis in this action filed pursuant to 42 U.S.C. § 1983. However, finding plaintiff's complaint too vague and conclusory to enable the Court to determine whether it is frivolous, fails to state a claim, or states a legitimate claim, the Court directed plaintiff to submit an amended complaint within thirty days. Plaintiff has now submitted an amended complaint (DE #7), adding defendant Kenneth W. Phillips. Having reviewed the original and amended complaints, and construing them together, it now appears to the Court that service is appropriate as to defendant Phillips.

However, with respect to defendant Morehead, the Court finds plaintiff's complaint should be dismissed. In order to state a claim for relief under § 1983, one must allege that a person acting under the color of state law deprived the plaintiff of some Constitutional right. Griffin-El v. MCI Telecommunications Corp., et al., 835 F.Supp. 1114, 1118 (E.D.MO 1993). In this particular case, plaintiff alleges that defendant Morehead, an attorney hired to represent him in a civil action against defendant, has failed to properly prosecute that action. However, a private attorney is not considered to be a state actor within the meaning of § 1983. In Chambers v. Kaplan, 648 F.2d 1193 (8th Cir. 1981), the Court held that even when a private attorney is appointed by the Court to represent the plaintiff, the attorney does not act under the color of state law. Accordingly,

IT IS, THEREFORE, ORDERED that service is appropriate for the defendant Kenneth Phillips. The Clerk of the Court shall prepare summons for the defendant and the United States Marshal is hereby directed to serve a copy of the original (DE #1) and amended complaints (DE #7) and summons on defendant without prepayment of fees and costs or security therefore.

IT IS FURTHER ORDERED that defendant Robert Morehead is hereby DISMISSED from plaintiff's complaint.

IT IS SO ORDERED this 8 day of June, 2009.


United States District Judge