

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

TOMMY R. ELPS
ADC #144914

PLAINTIFF

v.

No. 5:10CV00302 JLH/BD

CLINTON ARMSTRONG, et al.

DEFENDANTS

AMENDED AND SUBSTITUTED ORDER¹

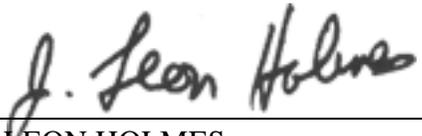
The Court has reviewed the Partial Recommended Disposition by United States Magistrate Judge Beth Deere and the objections to that Partial Recommended Disposition filed by the plaintiff, Tommy R. Elps. Magistrate Judge Deere recommended that the Court find that the complaint does not attribute any unconstitutional conduct to defendants Armstrong or Mitchell, nor does it state how these defendants caused the plaintiff injury. Magistrate Judge Deere therefore recommended that the plaintiff's claims against defendants Armstrong and Mitchell be dismissed without prejudice and these two defendants be dismissed as party defendants. In his objections, Elps argues that he identified Armstrong and Mitchell when he made allegations regarding what "they" did in the complaint.

The Court agrees with Magistrate Judge Deere that the complaint does not specify any unconstitutional conduct committed by the defendants Armstrong and Mitchell, nor does it explain how these defendants caused the plaintiff injury. Rather than dismiss those two defendants, however, the Court believes it would be more appropriate to direct the plaintiff Tommy R. Elps to file an amended complaint within 30 days describing specifically what he alleges each defendant did that is unconstitutional and how that conduct caused him harm.

¹ The Order previously entered on November 29, 2010 (Document #12), is set aside and is replaced by this Amended and Substituted Order.

The Court declines to adopt the Partial Recommended Disposition. Document #8. Instead, the Court ORDERS the plaintiff Tommy R. Elps to file an amended complaint within 30 days from the entry of this Order and describe in the amended complaint with specificity what each named defendant did that was unconstitutional and how that conduct caused him injury. If plaintiff fails to file such an amended complaint within 30 days from the entry of this Order, defendants Armstrong and Mitchell will be dismissed without prejudice. If Elps does file an amended complaint, it will still be subject to review and recommended disposition by Magistrate Judge Deere.

IT IS SO ORDERED this 1st day of December, 2010.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE