

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

EDWARD EUGENE MAYBERRY, JR.

PLAINTIFF

v.

No. 5:10CV00307 JLH/JTR

ARKANSAS DEPARTMENT  
OF CORRECTION, *et al.*

DEFENDANTS

**ORDER OF PARTIAL DISMISSAL**

Plaintiff, Edward Eugene Mayberry, Jr., is a prisoner in the Grimes Unit of the Arkansas Department of Correction (“ADC”). On October 21, 2010, his retained counsel filed a § 1983 Complaint alleging that Defendants ADC, ADC Director Ray Hobbs, Sergeant Lymon, Sergeant Kitchens, and Lieutenant McCormick violated Plaintiff’s constitutional rights while he was a prisoner in the Jefferson County Correctional Facility. *See* docket entry #1.

On February 25, 2011, the Court granted Plaintiff an extension, until March 21, 2011, to serve Defendants. *See* docket entry #4. Thereafter, Plaintiff served only Defendants ADC and Hobbs. *See* docket entry #6.

On March 31, 2011 the Court entered an Order giving Plaintiff fourteen days to show cause why Defendants Lymon, Kitchens, and McCormick should not be dismissed, without prejudice, due to lack of service. *See* docket entry #7; *see also* Fed. R. Civ. P. 4(m) (providing that: “If a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant”).

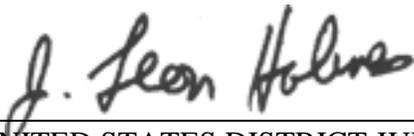
As of the date of this Order of Partial Dismissal, Plaintiff has not responded to the Court’s March 31, 2011 Order to Show Cause or served Defendants Lymon, Kitchens, and McCormick.

IT IS THEREFORE ORDERED THAT:

1. Defendants Lymon, Kitchens, and McCormick are DISMISSED, WITHOUT PREJUDICE, due to lack of service.

2. The Court CERTIFIES, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from this Order of Partial Dismissal would not be taken in good faith.

Dated this 19th day of April, 2011.

  
UNITED STATES DISTRICT JUDGE