

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

**RONNIE L. CHAPMAN
ADC #100054**

PLAINTIFF

v.

No. 5:15-cv-103-DPM-JTK

**JAMES GIBSON, Warden, Delta Regional
Unit, ADC; SHAMONE McPHADDEN,
Classification Officer, Delta Regional Unit,
ADC; SHAY BAKER, Training Officer, Delta
Regional Unit, ADC; and TONI PERRY,
Sergeant, Delta Regional Unit, ADC**

DEFENDANTS

ORDER

1. On *de novo* review, the Court partly adopts and partly declines the recommendation, *No* 54. FED. R. CIV. P. 72(b)(3). The motion for summary judgment, *No* 42, is granted in part, denied in part, and denied without prejudice in part.

2. Chapman's official capacity claims for money damages are dismissed with prejudice.

3. Chapman's claims against Gibson and McPhadden are dismissed without prejudice for failure to exhaust. But as to Perry and Baker, the Court agrees with Magistrate Judge Kearney's careful recommendation. The ADC waived the exhaustion defense as to Perry and Baker when it decided

Chapman's procedurally flawed grievance on the merits. *No 42-2 & 42-1 at 5-6.*

4. The remainder of the recommendation, *No 54 at 9-13*, is declined without prejudice. Both Chapman and the Court would substantially benefit from counsel presenting Chapman's side of the qualified immunity issue. Chapman is in jail in Bowie County, Texas. He's not in a position to meaningfully investigate the facts or present the merits of his case. *Plummer v. Grimes*, 87 F.3d 1032, 1033 (8th Cir. 1996). And the adversarial process will clarify what happened that evening. The Court therefore denies the remainder of Defendants' motion, *No 42*, without prejudice. The Court returns this case to Magistrate Judge Kearney. He will appoint counsel, consider any second motion for summary judgment, and make another recommendation.

5. If this case needs a trial, it will be on 30 May 2017. The Court will issue a final scheduling order with pretrial deadlines. Magistrate Judge Kearney will set other necessary deadlines, including a new dispositive motions deadline. Any recommendation on dispositive motions must be submitted no later than 1 February 2017.

* * *

Motion for summary judgment, No 42, partly granted, partly denied, and partly denied without prejudice. Chapman's official capacity claims for money damages are dismissed with prejudice. His claims against Gibson and McPhadden are dismissed without prejudice for failure to exhaust. His claims against Perry and Baker remain for now. This case is returned to Magistrate Judge Kearney for further proceedings.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

24 August 2016