

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

ROBERT L. MOORE, JR.,
ADC # 140226

PLAINTIFF

v.

No. 5:16-cv-269-DPM

CONNIE COOK, Visitation Clerk,
Cummins Unit, ADC; WILLIAM
STRAUGHN, Warden, Cummins Unit,
ADC; CHRIS BUDNIK, Deputy Warden,
Cummins Unit, ADC; and VERNON
ROBINSON, Building Major,
Cummins Unit, ADC

DEFENDANTS

ORDER

1. Unopposed recommendation, *No* 23, adopted as modified. FED. R. CIV. P. 72(b) (1983 addition to advisory committee notes). Motion to dismiss, *No* 10, granted in part and denied in part.

2. Moore's claims for money damages against the ADC defendants in their official capacities are dismissed with prejudice. And Moore doesn't have standing to assert claims on behalf of his wife; those claims are dismissed without prejudice.

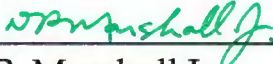
3. On individual liability, the recommendation is right as far as it goes – that is, there's no clearly established right to *contact* visitation. *Block v. Rutherford*, 468 U.S. 576, 586–589 (1984). But it's not clear from the pleadings

that Moore's complaint is limited to being denied contact visits. As for non-contact visits, the Court doesn't understand why the folks at the ADC denied visitation if the dates are as Moore says in his papers. Three years have passed since his wife's employment at the facility. And what is the confidential reason? The Court can't evaluate qualified immunity or consider the denial in relation to a legitimate penological interest if the defendants won't say why. *Overton v. Bazzetta*, 539 U.S. 126, 134-35 (2003). These are questions best answered on a more complete record.

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Recommendation, *No* 23, adopted as modified. Motion, *No* 10, granted in part and denied in part. The Court returns this case to the Magistrate Judge for further proceedings. An *in forma pauperis* appeal from this Order would not be taken in good faith. 28 U.S.C. § 1915(a)(3).

So Ordered.



D.P. Marshall Jr.
United States District Judge

8 February 2017