

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

EVERICK L. MONK

PLAINTIFF

V.

CASE NO. 1:11-CV-01063

DAVID RANKIN, *et al.*

DEFENDANTS

ORDER

Before the Court is Plaintiff's motion to file his R&R objections as a motion. (ECF No. 10). The Court considers Plaintiff's motion as a motion for reconsideration of the Court's order adopting Judge Bryant's R&R. The matter is ripe for the Court's consideration. For the following reasons, the motion will be granted.

Plaintiff objects to the Report and Recommendation filed December 1, 2011 by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (ECF No. 6). Judge Bryant screened Plaintiff's complaint because Plaintiff is proceeding *in forma pauperis*. 28 U.S.C. § 1915(g). Plaintiff has sued multiple parties whom he alleges are responsible for his inability to register for courses at Southern Arkansas University. Plaintiff's application to SAU was screened and investigated because of his past sex-offense conviction. After undergoing a background check, submitting a letter from his parole officer, and appearing before disciplinary and threat-assessment committees—all of which he was told were required for admission—he was in the end still denied admission. He was told, moreover, that no further appeal could be made.

Judge Bryant recommended dismissing David Rankin, the university's president; Janet Allison, the university's admissions officer; and Jay Coulson, the university's director of housing, because Plaintiff's complaint failed to assert any claims against them or even to mention them. The Court adopted Judge Bryant's Report and Recommendation on January 24, 2012. (ECF No. 8). Plaintiff filed his objections on February 23, 2012. According to Plaintiff, the reason he filed his objections nearly two months late is that he never received a copy of the R&R; nor, for that matter, a copy of the order adopting it.

Plaintiff filed the present motion on April 24, 2012. He asks the Court to consider his untimely R&R objections as a motion—in other words, as a motion to reconsider the Court's adoption of the R&R. Plaintiff objects to David Rankin and Jay Coulson being dismissed.¹ Reviewing the record *de novo*, *Branch v. Martin*, 886 F.2d 1043, 1045 (8th Cir. 1989), the Court finds reason to vacate its previous order adopting the R&R. (ECF No. 8).

Judge Bryant recommended dismissing David Rankin, Janet Allison, and Jay Coulson. Plaintiff contends that he visited Rankin's office and left phone messages for him but that Rankin avoided him and "threw" his calls. He also contends that Rankin called him the day after registration closed and relayed the news that the threat-assessment committee's decision was final and that Plaintiff could thus not enroll. Plaintiff further contends that Coulson was a member of the threat-assessment committee that denied him an opportunity to enroll.

While the Court agrees with Judge Bryant's assessment as to David Rankin, the Court finds that Jay Coulson should not have been dismissed. Plaintiff sued every member of the threat-assessment committee. His claims against six members of that committee were allowed to proceed,² even though Plaintiff's allegations against at least five of those members were no more

¹ Plaintiff agrees that Janet Allison should be dismissed.

² Those members are: Sandra Smith; Unice Walker; Okandice Herron; Al Lachut; Judy Hines; and Paul Woods.

developed than his claims against Jay Coulson. If Plaintiff's allegations against the other committee members were sufficiently developed to survive screening, then Plaintiff's allegations against Coulson should likewise have survived.

Accordingly, Plaintiff's Motion for Reconsideration (ECF No. 10) should be and hereby is **GRANTED**. The Court's order adopting the R&R (ECF No. 8) is hereby **VACATED**. The Court now adopts the R&R as to David Rankin and Janet Allison, who should remain dismissed, but declines to adopt the R&R as to Jay Coulson, who should not have been dismissed. Therefore, the Court directs the United States Marshal Service to serve Jay Coulson at Southern Arkansas University, 100 E. University, Magnolia, Arkansas 71753. The Court further directs the Marshal Service to serve Okandice Herron at the same address. Herron has not been dismissed, but for reasons unknown to the Court, she has not yet been served.

IT IS SO ORDERED, this 15th day of October, 2012.

/s/ Susan O. Hickey
Hon. Susan O. Hickey
United States District Judge