

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

DERROL DEE KIRBY, III

PLAINTIFF

v.

Civil No. 06-2168

JOHN ROTH, Ex-Chief of Police, Barling, Arkansas
Police Department; LARRY MERCHANT, next in charge
under Police Chief, Barling Police Department;
CITY OF BARLING; KEVIN DOUGAN,
Barling Police Department Patrolman; JOHN
BARBOR, Barling Police Department Patrolman

DEFENDANTS

ORDER

Now before the Court is the Motion for a Jury Trial (Doc. 42) filed by Plaintiff on October 20, 2009. Plaintiff's case was transferred to this District on September 21, 2006. (Doc. 5). Defendants answered the complaint on October 18, 2007. (Doc. 14).

Federal Rule of Civil Procedure 38(b) states that:

[A]ny party may demand a trial by jury of any issue triable of right by a jury by (1) serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue

...

Plaintiff's demand for a Jury Trial is clearly untimely under the Federal Rules of Civil Procedure, as such "the failure of a party to serve and file a demand" as required by the rule "constitutes a waiver by the party of a trial by jury." Fed. R. Civ. Proc. 38 (d). Accordingly, Plaintiff's Motion for a Jury Trial (Doc. 42) is DENIED as untimely.

IT IS SO ORDERED this 21st day of December 2009.

/s/ J. Marschewski
HON. JAMES R. MARSCHEWSKI
UNITED STATES MAGISTRATE JUDGE