

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

JOHN ROBERT DEMOS, JR.

PLAINTIFF

vs.

Civil No. 4:09-cv-4101

THE VIRGINIA COMPANY, *et al*

DEFENDANTS

REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

Plaintiff, John Robert Demos, Jr., is currently an inmate of the McNeil Island Corrections Center in Steilacoom, Washington, and filed this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff seeks to proceed *in forma pauperis*. The complaint was provisionally filed prior to a determination regarding service of process. Pursuant to the provisions of 28 U.S.C. § 636(b)(1) and (3)(2005), the Honorable Harry F. Barnes, United States District Judge, referred this case to the undersigned for the purpose of making a report and recommendation.

1. Background

Plaintiff's complaint was provisionally filed on September 15, 2009. (Doc. No.1). On October 2, 2009, the Court ordered that Plaintiff complete an Addendum to Complaint to assist the Court in the determination of whether the complaint should be served upon the Defendants. (Doc. No. 6). This Order sought, among other things, information from Plaintiff showing the basis of federal court jurisdiction, facts for establishing venue with this Court, and facts regarding where and how each Defendant was to be served. *See Id.* Plaintiff responded to this order and filed his Addendum to Complaint on November 23, 2009. (Doc. No. 7).

2. Discussion

Based on a review of Plaintiff's complaint (Doc. No. 1) and Plaintiff's Addendum to Complaint (Doc. No. 2), the Court recommends that Plaintiff's complaint be dismissed for a failure to state a claim upon which relief may be granted. *See* Fed. R. Civ. P. 12(b)(6). Plaintiff has failed to allege any claim of a federal nature or any claim based on diversity of citizenship upon which he could be granted relief.

Plaintiff has also failed to establish that venue of this matter is proper in the United States District Court for the Western District of Arkansas, Texarkana Division. Plaintiff was directed to set forth facts in the Addendum to Complaint which establish that the Western District of Arkansas is the proper venue to pursue his claims. (Doc. No. 6). Plaintiff's response was as follows:

The Virginia Company has tentacles like an octopus that spread all over the United States that's because the Virginia Company and the United States are one and the same. The U.S. District Court of Texarkana, Arkansas is a United States Court.

Plaintiff has failed to establish that venue is proper with this Court, and as such, this matter should be dismissed based on Fed. R. Civ. P. 12(b)(3).

Finally, Plaintiff has failed to describe a proper Defendant or means by which any Defendant may be served. Plaintiff was directed to set forth facts in the Addendum to Complaint regarding service of his complaint on the Defendants. (Doc. No. 6). Plaintiff's response was as follows:

All Defendants have the same mailing address, 1600 Pennsylvania Avenue, Wash. D.C. or, the Office of the U.S. Secretary of State, or the Office of the U.S. Treasury Secretary. I repeat, the Virginia Company and the United States of America are one and the same.

Plaintiff has failed to provide information by which his suit may be properly served. Further, the U.S. Secretary of State, the Office of the U.S. Treasury Secretary, and the United States of America are not Defendants in this matter.

Despite being offered the opportunity to do so, Plaintiff has wholly failed to state a claim upon which relief can be granted, he has failed to show why the Western District of Arkansas is the proper

place to file this action, and he has failed to specifically identify where and how the Defendant may be served with process. The Court finds the claims raised in this matter are frivolous and should be dismissed with prejudice.

3. Conclusion

I therefore recommend that this case be dismissed as the Plaintiff fails to state a claim on which relief may be granted. I further recommend the Plaintiff's action be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2)(B)(i)-(iii)(an *in forma pauperis* action, or any portion thereof, may be dismissed on such grounds at any time).

Plaintiff has ten days from receipt of the report and recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. Plaintiff is reminded that objections must be both timely and specific to trigger de novo review by the district court.

DATED this 30th day of November, 2009.

/s/ Barry A. Bryant

HON. BARRY A. BRYANT

U. S. MAGISTRATE JUDGE