

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

BILLY ROGERS,

Plaintiff,

v.

CASE NO. 1:10-cv-00010-MP-AK

BELL, et al,

Defendants.

_____ /

ORDER

This matter is before the Court upon the filing of a Response by Plaintiff to the Court's previous order directing him to file an amended complaint on the proper forms and provide inmate account information. (See Docs.3, 7 and 8). In his response to the latest Court order, Plaintiff seeks assistance from this Court to appoint counsel and to direct persons to assist him at the correctional institution where he resides in Lucasville, Ohio. It has become obvious as the result of this most recent filing that Plaintiff is seeking to bring claims against persons at the institution where he is presently incarcerated and there is no connection either with the claims or the parties with the Northern District of Florida.

A federal district court has the authority under 28 U.S.C. § 1406(a) to transfer a case to another district or division "in which it could have been brought." A court may raise the issue of defective venue *sua sponte*, but should not dismiss an improperly filed case for lack of venue without giving the parties an opportunity to respond. Lipofsky v. New York State Workers Comp. Bd., 861 F.2d 1257, 1259 (11th Cir. 1988). The Lipofsky court did not place the same limitations on the court's ability to transfer a case to the appropriate forum pursuant to 28 U.S.C.

§ 1404(a). See Lipofsky, 861 F.2d at 1259, n. 2. Thus, it is recommended that the case be transferred rather than dismissed. There is no need for a hearing on this transfer. Cf. Costlow v. Weeks, 790 F.2d 1486, 1488 (9th Cir. 1986) with Starnes v. McGuire, 512 F.2d 918, 934 (D.C. Cir. 1974).

Because Lucasville is in Scioto County Ohio, which is in the Western Division of the Southern District of Ohio, this matter should be transferred to that court for all further proceedings.

Accordingly, it is

ORDERED AND ADJUDGED:

That the Clerk of Court shall transfer this matter to the Western Division of the Southern District of Ohio.

DONE AND ORDERED this 6th day of April, 2010

s/Maurice M. Paul
Maurice M. Paul, Senior District Judge