

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

WILLIE FRED BAUCHAM,

Plaintiff,

v.

CASE NO. 4:10-cv-00263-MP -WCS

CITY OF APALACHICOLA, FRANKLIN COUNTY, GARY HUNNINGS, VAN JOHNSON,
KIT MASHBURN, MIKE MOCK, ROBERT SHELLEY, BOBBY VARNES, JIM WATKINS ,

Defendants.

ORDER

This matter is before the Court on Doc. 35, Report and Recommendation of the Magistrate Judge, and Doc. 32, Motion to Dismiss Count I of the Second Amended Complaint by Kit Mashburn, Mike Mock, Robert Shelley, and Jim Watkins.

The Report and Recommendation of the Magistrate Judge recommends that Defendant Franklin County's Amended Motion to Dismiss, Doc. 30, be granted and Franklin County be dismissed without prejudice, and this case be remanded for further proceedings. Plaintiff has not objected to the recommendation, and the time for doing so has passed. Finding no plain error, the Report and Recommendation of the Magistrate Judge is adopted with the following exception. The Plaintiff is no longer *pro se* in this civil rights action. As such, this case will not be remanded to the Magistrate Judge.

Defendants' Motion to Dismiss Count I of the Second Amended Complaint argues that Plaintiff has failed to sufficiently allege the elements of a conspiracy or alleged Defendants' involvement in any conspiracy. Plaintiff responded and states that he does not object to Defendants' Motion to Dismiss but asks the court to grant the motion without prejudice subject

to the requirements of the initial and final scheduling orders. Having initially filed his complaint pro-se, Plaintiff should be afforded the opportunity to amend his complaint with counsel.

Accordingly, it is hereby

ORDERED AND ADJUDGED:

1. The Report and Recommendation of the Magistrate Judge, Doc. 35, is ADOPTED and incorporated herein.
2. The Amended Motion to Dismiss, Doc. 30, is GRANTED and Franklin County is DISMISSED without prejudice.
3. The Motion to Dismiss Count I, Doc. 32, is GRANTED and Count I of the Second Amended Complaint is DISMISSED without prejudice.

DONE AND ORDERED this 7th day of June, 2011

s/Maurice M. Paul

Maurice M. Paul, Senior District Judge