

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-22918-CIV-JORDAN
MAGISTRATE JUDGE P.A. WHITE

HARRY W. ROBERTS,

:

Plaintiff,

:

v.

REPORT OF
MAGISTRATE JUDGE

:

G. PICHARDO, et. al.

:

Defendants.

Harry W. Roberts, who is currently detained in the Florida State Prison in Raiford, filed a pro se civil rights complaint pursuant to 42 U.S.C. §1983 in Florida's Eleventh Judicial Circuit. On July 22, 2009, defendants filed a notice of removal in case number 09-22167-CIV-MOORE and attached a copy of all documents filed in state court. (09-22167 DE# 1). In the present case, on September 29, 2009, Roberts filed his §1983 complaint against the same defendants. (09-22918 DE# 1).

In case number 09-22167, the defendants moved to dismiss or in the alternative for a more definite statement, as a copy of the complaint had never been filed in this matter. (09-22167 DE# 7). This Court issued a report (09-22167 DE# 19), adopted by the district court (09-22167 DE# 30), recommending that the motion to dismiss be denied and the motion for a more definite statement be granted. In light of the latter recommendation, this court issued an order instructing Roberts to file a superceding amended complaint. (09-22167 DE# 23). At present, Roberts' complaint is due on or before January 25, 2010. (09-22167 DE# 33).

In both cases, Roberts filed a December 14, 2009 second motion for clarification. (09-22167 DE# 29; 09-22918 DE# 12). Roberts notes that he intended to prosecute a single cause of action against the defendants and requests that this Court clarify why two separate cases are pending. (09-22167 DE# 29; 09-22918 DE# 12). In case number 09-22918, The Undersigned entered a December 16, 2009 paperless order granting Roberts's motion for clarification

and directing him to file an amended complaint. (09-22918 DE# 13). The second motion for clarification is pending in case number 09-22167.

Because the cause of action removed to federal court by the defendants in case number 09-22167 is identical to cause of action subsequently initiated by Roberts in case number 09-22918, the Undersigned recommends that the present case be closed. An order directing Roberts to file a superceding amended complaint containing all allegations against all defendants will be issued in case number 09-22167.

Based on the foregoing, it is recommended that case number 09-22918 be closed.

Objections to this report may be filed with the District Judge within fourteen days of receipt of a copy of the report.

It is so recommended at Miami, Florida, this 12th day of January, 2010.



UNITED STATES MAGISTRATE JUDGE

cc: Harry W. Roberts, Pro Se
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