

Dismissals with prejudice are drastic remedies that are to be used only where lesser sanction would not better serve the interests of justice. Therefore, dismissals with prejudice are not appropriate unless the district court finds both that there is a clear record of delay or willful misconduct and that lesser sanctions are inadequate. Mere negligence or confusion does not rise to the level of willful misconduct.

Id. (internal citations omitted).

The Court does not find a clear record of delay or willful misconduct justifying a dismissal with prejudice. One previous § 1983 suit and a habeas suit were omitted from the complaint. The Plaintiff attempted to amend his complaint pursuant to Rule 15(a) when he was notified of the deficiency. (Doc. 29 at 2). It does not appear that the Plaintiff omitted these cases from his complaint in bad faith.

The Court refers the matter back to the Magistrate Judge for consideration of the other grounds for dismissal in the Motion to Dismiss as well as reconsideration of whether the Plaintiff's Motions for Entry of Default and Appointment of Counsel are moot. (Docs. 23, 25, 33).

SO ORDERED, this 30th day of June, 2016.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT