

FILED  
U.S. DISTRICT COURT  
SAVANNAH DIV.

IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION

2009 APR -2 AM 9: 59

CLERK *M. Sante*  
SO. DIST. OF GA.

DAVID RICHARD SUTHERLAND, )  
)  
Plaintiff, )  
)  
v. )  
)  
AL ST. LAWRENCE, McARTHUR )  
HOLMES, DR. SAMS, and DR. )  
JACKSON, )  
)  
Defendants. )

CASE NO. CV407-096

O R D E R

Before the Court is the Magistrate Judge's Report and Recommendation (Doc. 102), to which objections have been filed (Doc. 104). For the reason that follows, the Court **DECLINES TO ADOPT** the Magistrate Judge's Report and Recommendation. Plaintiff is **ORDERED** to conform to Local Rule 56.1 within **twenty (20) days** of receipt of this Order. The Magistrate Judge will then reconsider Defendants' Motion in light of the filing, assuming that that filing complies with Rule 56.1.

This case is currently at the summary judgment stage. The Magistrate Judge, relying on Plaintiff's failure to adhere to Local Rule 56.1, issued a Report and Recommendation granting Defendants' Motion for Summary Judgment. Although Plaintiff is pro se, the Magistrate Judge found that Plaintiff is "a sophisticated litigant who is quite familiar with this Court's

Local Rules." (Doc. 102 at 2 n.1.) In addition, the Magistrate Judge noted that Plaintiff was previously warned that he must comply with this specific rule. (Id.) Applying this Rule to Plaintiff's Response to Defendants' Motion for Summary Judgment, the Magistrate Judge found no issue of material fact and recommended a grant of summary judgment for the Defendants. Plaintiff responds that he was unable to comply with this Local Rule because he does not have generalized access to the Local Rules at his prison facility. (Doc. 104 at 1-2.)

Plaintiff is advised that Local Rule 56.1, in pertinent part, reads as follows:


Upon any motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, in addition to the brief, there shall be [attached] to the motion a separate, short, and concise statement of the material facts as to which it is contended there exists no genuine issue to be tried as well as any conclusions of law thereof. Each statement of material fact shall be supported by a citation to the record. All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted [to be true] unless [opposed] by a statement [supported by the record] served by the opposing party.

S.D. Ga. L.R. 56.1 (emphasis added). In other words, Plaintiff had a duty to respond to the Statement of Undisputed Facts (Doc. 79) by directing this Court's attention, through citations to the record, to actual evidence suggesting that these facts are not true. Plaintiff has not complied with this rule; and even pro se plaintiffs are required to comply with the Rules of the

Court. Moon v. Newsome, 863 F.2d 835, 837 (11th Cir. 1989). However, as Plaintiff is proceeding pro se, the Court will grant him extra time to bring his response into compliance with this Rule. See Espey v. Wainwright, 734 F.2d 748, 749-50 (11th Cir. 1984) (granting extra leeway to pro se litigant by construing his filings liberally).

Accordingly, after careful consideration, the Court **DECLINES TO ADOPT** the Magistrate Judge's Report and Recommendation. Plaintiff is **ORDERED** to file a supplemental response to Defendants' Motion for Summary Judgment complying with Local Rule 56.1 within **twenty (20) days** of receipt of this Order. At that time Defendants' Motion for Summary Judgment will be reconsidered in light of Plaintiff's filing.

SO ORDERED this 2<sup>nd</sup> day of April, 2009.

  
WILLIAM T. MOORE, JR., CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA