

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DEON D. HILLIARD,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 3:15-cv-5-NJR-DGW
	)	
JAMES LUTH,	)	
	)	
Defendant.	)	

**ORDER**

**WILKERSON, Magistrate Judge:**

This matter is before the Court *sua sponte*. On August 8, 2016, Plaintiff filed a First Amended Complaint (Doc. 60). It has been more than 21 days since his original complaint was filed (which was on January 5, 2015) and more than 21 days since a responsive pleading was filed (an Answer was filed on May 27, 2015). Therefore, Plaintiff could not, pursuant to Federal Rule of Civil Procedure 15(a)(1), file an amended pleading as a matter of right. Plaintiff should have filed a motion to amend the complaint as required by Rule 15(a)(2) (there is no indication that Defendant consented to the filing of an amended pleading).

In light of Plaintiff’s *pro se* status, this Court would normally construe the pleading as a motion to amend. However, the circumstances in this case do not support such leniency. The original deadline for filing a motion to amend was April 8, 2016 (Doc. 45). That deadline was extended to May 9 at Plaintiff’s request (Doc. 52), and finally to July 29, again at Plaintiff’s request (Doc. 59). Plaintiff’s amended pleading, however, was not filed until August 8, 2016, 10 days after the deadline. There is no explanation of why Plaintiff did not file this document within the time allowed by the Court nor why he failed to file a motion to amend after having been explicitly directed by the Court to do so. That is, Plaintiff has not shown excusable neglect as

required by Federal Rule of Civil Procedure 6(b)(1)(B).

At this late stage of the proceedings, dispositive motions are now due by November 14, 2016, Plaintiff seeks to add a number of new Defendants, a policy and practice claim, and an “indemnification” claim against the State of Illinois. Such claims will unnecessarily delay these proceedings and there is no explanation of why Plaintiff waited to assert such claims.

Therefore, the First Amended Complaint is hereby **STRICKEN**

**DATED: November 10, 2016**



**DONALD G. WILKERSON**  
**United States Magistrate Judge**