

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

BRANDON S. LAVERGNE (#424227)

CIVIL ACTION

VERSUS

N. BURL CAIN, ET AL.

NO. 15-34-BAJ-SCR

**RULING ON MOTION TO SEVER AND REMOVE DEFENDANT**  
**and**  
**RULING ON MOTION TO CORRECT UNDER RULE 15(C)**

Before the Court is the plaintiff's Motion to Sever and Remove Defendant From This Suit. Record document number 39. Also before the court is the plaintiff's Motion to Correct Under F. Civil Code Rule 15(c). Record document number 43.

Pro se plaintiff, an inmate at the Louisiana State Penitentiary, Angola, Louisiana, filed this action pursuant to 42 U.S.C. § 1983 against Warden N. Burl Cain, Legal Programs Director Trish Foster, Maj. Larry Smith, Maj. Michael Vaughn, Lt. Cindy Vannoy, Classification Supervisor Amber Vittirao and an unidentified Supervisor of Investigative Services. The clerk of court issued a summons to, among others, "Michael Smith."<sup>1</sup> The U.S. Marshal did not serve Michael Smith.<sup>2</sup> Nor did the U.S. Marshal serve defendant Maj. Larry Smith, as he is not employed by the Louisiana Department of Public Safety and Corrections. Plaintiff explained that he did not try to serve a Michael Smith,

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<sup>1</sup> Record document number 36.

<sup>2</sup> Record document number 38, U.S. Marshal Process Receipt and Return.

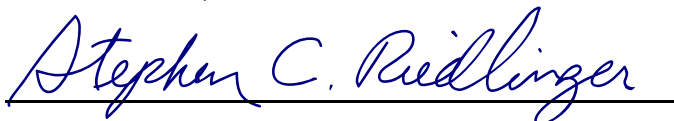
and moved to dismiss Maj. Larry Smith as he is not a necessary party since the other disciplinary board member, Classification Supervisor Amber Vittirao, is still party. However, the plaintiff also explained in his Motion to Correct Under F. Civil Code Rule 15(c), which was filed a few days later, that he recently learned the correct name of defendant Maj. Larry Smith is Lt. Col. Paul Smith. Plaintiff move for an order changing the name of this defendant to Lt. Col. Paul Smith.

As to the Motion to Sever and Remove Defendant From This Suit, there is no need to take any further action regarding the Michael Smith to whom a summons was incorrectly issued. As to the defendant named Maj. Larry Smith, the Motion to Correct Under F. Civil Code Rule 15(c), shall be treated as a motion for leave to amend to correctly identify this defendant as Lt. Col. Paul Smith, which motion supercedes the Motion to Sever and Remove Defendant From This Suit.

Accordingly, the Motion to Sever and Remove Defendant From This Suit is denied as unnecessary as to Michael Smith and as moot as to defendant Maj. Larry Smith. The Motion to Correct Under F. Civil Code Rule 15(c), treated as a motion for leave to amend, is granted, correcting the name of defendant Maj. Larry Smith to Lt. Col. Paul Smith.

An order to issue summons and for service will be issued.

Baton Rouge, Louisiana, November 19, 2015.



STEPHEN C. RIEDLINGER  
UNITED STATES MAGISTRATE JUDGE