

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FREDERICK OPIYO,

Plaintiff,

v.

Case No. 09-cv-13609
Hon. George Caram Steeh

VIRG STRICKLER, et al.,

Defendants.

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ORDER ACCEPTING REPORT AND RECOMMENDATION (#5)

This matter has come before the Court on the Magistrate Judge's Report and Recommendation filed October 15, 2009. Plaintiff filed an objection on January 4, 2010.

Magistrate Judge Charles Binder recommended *sua sponte* that all the defendants other than Sanilac County Deputies Boehm, Darling, and Wedge be dismissed with prejudice for failure to state a claim. The Magistrate Judge also dismissed with prejudice each claim made against the defendants in their official capacities because the plaintiff failed to identify a policy or custom that contributed to the constitutional deprivations alleged in his complaint. The objection asks the court to change the Magistrate Judge's recommended dismissals with prejudice to dismissals without prejudice on the off chance that facts found in discovery might support the dismissed claims. Instead of identifying reasons to conclude that facts likely exist to support plaintiff's claims, plaintiff simply asserts that such facts may exist.

Plaintiff's objection is not well founded. The Magistrate Judge in his duties under 28 U.S.C. § 1915A, 28 U.S.C. § 1915(e), and 42 U.S.C. § 1997e (c)(1) correctly found that

plaintiff fails to allege specific acts or unconstitutional behavior by Deputies Brinker, Paling, and the remaining defendants. See Copeland v. Machulis, 57 F.3d 476, 481 (6th Cir. 1995); Kesterson v. Moritsugu, 1998 WL 3210008 at *4 (6th Cir. 1998). In addition, plaintiff's claims against the defendants in their official capacities fail as well because they lack a direct causal link between a municipal policy or custom and the alleged constitutional deprivations. See Board of County Commissioners of Bryan County, Okla. v. Brown, 520 U.S. 397, 405 (1997); City of Canton v. Harris, 489 U.S. 378, 385 (1989).

Being fully advised in the premises and having reviewed the record and the pleadings, including the Report and Recommendation and the objections thereto, the Court hereby ACCEPTS AND ADOPTS the Magistrate Judge's Report and Recommendation. Accordingly, the complaint may be served only on Defendants Broehm, Darling, and Wedge in their individual capacities. Defendants Virg Strickler, Garry Binniecki, Sara Brinker, William Smith, Corporal Hawk, Robert Todd Palmer, Douglas Allen Shaggena, Aaron Hillman and Elizabeth Paling are dismissed with prejudice. Further, each claim made against the defendants in their official capacity is dismissed with prejudice.

SO ORDERED.

Dated: January 20, 2010

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on January 20, 2010, by electronic and/or ordinary mail.

S/Josephine Chaffee
Deputy Clerk