

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FREDERICK O. OPIYO,

Plaintiff,

Case No. 09-13609

v.

HON. GEORGE CARAM STEEH

DEPUTY H. BOEHM et al.,

Defendants.

_____ /

ORDER STRIKING PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT (DOC. # 31); DENYING MOTION FOR LEAVE
TO PROCEED IN FORMA PAUPERIS (DOC. # 32); DENYING APPLICATION
TO PROCEED IN FORMA PAUPERIS (DOC. # 33); AND DENYING
MOTION FOR APPOINTMENT OF COUNSEL (DOC. # 34)

The above-captioned case was initiated in 2009 by the filing of a *pro se* 42 U.S.C. § 1983 complaint by federal prisoner Frederick Opiyo.¹ The case has now been closed for well over two years. Nonetheless, Opiyo has recently filed what appears to be a new *pro se* response to the motion for summary judgment filed by defendants in April 2010 and granted by the court in September 2010. Opiyo has also filed the form application to proceed in forma pauperis and *pro se* motions requesting “leave to proceed in forma pauperis” and “for appointment of counsel.”

¹The court notes that a limited appearance was filed by counsel for Opiyo, who filed certain pleadings while the matter was pending.

Opiyo's claims remaining at the time defendants filed their motion for summary judgment were dismissed by this court, by its acceptance of the magistrate's report and recommendation, for failure to exhaust administrative remedies. As noted above, this occurred in September 2010. The court noted in its September 2010 order that Opiyo had failed to lodge any objections to the R & R.

In October 2012, *two years* after disposition of the case, Opiyo filed a motion for leave to file objections to the report and recommendation. This court denied that motion, stating that "[b]ecause the motion does not address plaintiff's failure to exhaust administrative remedies, which is fatal to his claims, the court believes an objection would not change the result in this case." (Doc. # 30 at 1-2.)² Now, months after that order, Opiyo has again sent documents to the court.

This case is closed. Opiyo did not file timely objections to the report and recommendation, which was accepted by the court more than two and a half years ago, and did not appeal from the court's judgment. Accordingly, there is no pending matter with respect to which the court could even consider the appointment of counsel, and no reason to consider another application to proceed in forma pauperis (the court notes Opiyo's 2009 application to proceed IFP was granted by the court). Accordingly,

²It appears that Opiyo's current filing is, in part, an attempt to respond to that order. He states that "at least three or more impediments made a timely Exhaustion absolutely impossible," and describes his "physical incapacitation," intimidation, and label of "snitch" allegedly assigned to him by jail personnel. (Doc. # 31 at 2.) However, in that very document, Opiyo states that following a letter sent by him to the chief judge of this court, dated October 12, 2008, in which he requested "security and protection for fear of retaliation," he was "immediately transferred...to a federal detention center." *Id.* Opiyo's attempt to explain his failure to exhaust is thus belied by his acknowledgment that he was promptly removed from the situation he states he found so intimidating.

Opiyo's motions to (1) proceed IFP and (2) for appointment of counsel are hereby **DENIED**. Additionally, Opiyo's form application to proceed IFP is **DENIED**, and his "response" to defendants' motion for summary judgment is hereby **STRICKEN**.

IT IS SO ORDERED.

Dated: May 2, 2013

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 May 2, 2013, by electronic and/or ordinary mail and also Frederick O. Opiyo #39194-039, FCI Bastrop, Federal Correctional Institution, P. O. Box 1010, Bastrop, TX 78602.

s/Barbara Radke
Deputy Clerk