

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

FREDERICK BANKS

PLAINTIFF

VERSUS

CIVIL ACTION NO. 5:08cv336-DCB-MTP

D. BUTLER, et al.

DEFENDANTS

ORDER

This matter is before the court on a Motion [33] for Substitution of Defendants filed by Plaintiff on November 9, 2009. Having reviewed the motion, the court finds that it should be granted.

In his motion, Plaintiff seeks leave of court to substitute six named individuals for the John Doe Defendants. Plaintiff avers that he was not previously able to identify these individuals, and that they all received notice of this lawsuit before the 120-day period for service of process expired. The Defendants currently before the court have not filed a response to Plaintiff's motion. By Order [34] dated December 1, 2009, the court ordered Plaintiff to provide, in writing, the following information regarding each of the proposed additional defendants: their full name and complete mailing address; and a statement of how each individual violated his constitutional rights. Plaintiff has filed his Response [35] to the Court's order, providing the requested information. Having reviewed Plaintiff's Response, and in light of Defendants' failure to respond to Plaintiff's motion,¹ the court finds that the motion should be granted. Accordingly,

IT IS ORDERED that Plaintiff's Motion [33] for Substitution of Defendants is granted. Plaintiff need not file any additional pleadings, as his Complaint [1] and Amended Complaints [5] [6] shall be deemed amended as set forth in his motion.

¹ See Local Rule 7(b)(3)(E) (providing that "[i]f a party fails to respond to any motion, other than a dispositive motion, within the time allotted, the court may grant the motion as unopposed.").

IT IS FURTHER ORDERED that:

1. Plaintiff must serve the newly-added defendants² with the summons, the Complaint [1], the Amended Complaints [5][6] and a copy of his Response [35] to Court Order by May 7, 2010, and must file the proof of service of the summons and complaint by the server's affidavit pursuant to rule 4(1).³
2. That Plaintiff's failure to properly serve these defendants in accordance with Rule 4 of the Federal Rules of Civil Procedure may result in the dismissal of any unserved defendant.
3. That the Clerk of Court is directed to mail to Plaintiff five⁴ blank summonses. Plaintiff is responsible for preparing the summonses, returning them to the Clerk for issuance, and for arranging service of the issued summonses. *See* Fed. R. Civ. P. 4; Order [2]; Memorandum [2] from Clerk.

Plaintiff should understand that this order allowing process to issue against the above named defendants does not reflect any opinion of this court that the claims contained in the complaint will or will not be determined to be meritorious.

It is Plaintiff's responsibility to prosecute this case. Failure to advise this Court of a change of address or failure to comply with any order of this Court will be deemed a purposeful

² These defendants are: K. Everett; Skipper Scott; Lisa Chisolm; Rachael Fiber; and Mr. Brown. *See* [35]. Although Plaintiff also seeks to add Phillip Jackson as a Defendant, the docket reflects that Mr. Jackson is already a Defendant in this action.

³ As previously explained to Plaintiff (*see* Order [4]; Memorandum [2]), because he is not proceeding *in forma pauperis* pursuant to 28 U.S.C. § 1915, the court and the U.S. Marshal's office have no obligation to assist Plaintiff with the service of process. *See* Fed. R. Civ. P. 4(c); Local Rule 4(b). Accordingly, it is Plaintiff's responsibility to serve the newly-added defendants.

⁴ As noted *supra*, Phillip Jackson is already a Defendant in this action. Accordingly, Plaintiff need not serve process on him again.

delay and contumacious act by Plaintiff and may result in dismissal of this case.

SO ORDERED AND ADJUDGED this the 8th day of January, 2010.

s/ Michael T. Parker

United States Magistrate Judge