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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

LARRY GIBBS, JR., Plaintiff(s), vs. DR. MARIA FEY, et al., Defendant(s).	Case No. 2:15-cv-01958-GMN-NJK **ORDER**

Pending before the Court is Plaintiff's motion for an order allowing service on the Nevada Department of Corrections with respect to his claim against Defendant Ziemann. Docket No. 26. Plaintiff argues that he has sued Defendant Ziemann in his official capacity and, as such, he has essentially sued the Nevada Department of Corrections. *See id.* at 3.[1] The Court finds it in the interest of justice to receive a response from the state on this issue. Accordingly, the Nevada Attorney General's Office may file a response to the motion, no later than September 28, 2017, indicating (1) whether it will accept service with respect to Plaintiff's official capacity claim against Defendant Ziemann and, if not, (2) why the Court should deny Plaintiff's request to allow service on the Nevada Department of Corrections. To the extent such response is not filed, the Court will assume the state does not object to service as requested.

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[1] Plaintiff's complaint identifies the claim against Defendant Ziemann as both in his individual and official capacities, and seeks both damages and prospective injunctive relief. *See* Docket No. 1-1 at 3, 14. A civil rights plaintiff may not recover damages against a defendant in his official capacity, but may obtain prospective injunctive relief. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58, 64-66, 71 n.10 (1989).

Dockets.Justia.com

The Clerk's Office is **INSTRUCTED** to serve a copy of this order on Deputy Attorney General Tiffany Breinig.

IT IS SO ORDERED.

Dated: September 14, 2017

NANCY J. KOPPE
UNITED STATES MAGISTRATE JUDGE