

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 RICHARD EDWARDS,

4 Plaintiff

5 v.

6 WASHOE COUNTY SHERIFF’S OFFICE,
7 et al.,

8 Defendants

Case No.: 2:17-cv-02174-APG-VCF

Order Granting Motion to Dismiss and Denying Motion to Strike

[ECF Nos. 19, 26]

9 The screening order in this case allowed a due process claim to proceed against defendant
10 Washoe County Sheriff’s Office. ECF Nos. 11 at 15; 14. Defendant Washoe County Sheriff’s
11 Office and its Jail Transport Unit move to dismiss, arguing that they are not entities capable of
12 suing or being sued in their own names. Plaintiff Richard Edwards responds by moving to strike
13 the motion. He argues the merits of his claim without addressing whether the Washoe County
14 Sheriff’s Office is capable of being sued in its own name.

15 The defendants’ capacity to sue or be sued is determined “by the law of the state where
16 the court is located.” Fed. R. Civ. P. 17(b)(3). Under Nevada law, “[i]n the absence of statutory
17 authorization, a department of the municipal government may not, in the departmental name, sue
18 or be sued.” *Wayment v. Holmes*, 912 P.2d 816, 819 (Nev. 1996) (holding that the Washoe
19 County District Attorney’s office was not a suable entity). The “State of Nevada has not waived
20 immunity on behalf of its departments of political subdivisions.” *Id.* (citing Nev. Rev. Stat.
21 § 41.031). The Washoe County Sheriff’s Office has not been conferred the power to sue and be
22 sued in its own name. *See Schneider v. Elko Cty. Sheriff’s Dep’t*, 17 F. Supp. 2d 1162, 1164 (D.
23 Nev. 1998). Because the Washoe County Sheriff’s Office is merely a department of Washoe

1 County, it lacks the capacity to be sued and will be dismissed from this action with prejudice.
2 The screening order did not identify any claims proceeding against the Jail Transport Unit, but to
3 the extent Edwards is attempting to assert a claim against the Unit, that also would fail as a
4 matter of law for the same reasons. However, I grant Edwards leave to amend to name the
5 proper defendant, Washoe County.

6 IT IS THEREFORE ORDERED that defendant Washoe County Sheriff's Office's
7 motion to dismiss **(ECF No. 19) is GRANTED.**

8 IT IS FURTHER ORDERED that plaintiff Richard Edwards' motion to strike **(ECF No.**
9 **26) is DENIED.**

10 IT IS FURTHER ORDERED that by June 10,2019, plaintiff Richard Edwards may file
11 an amended complaint with the only permissible amendment being to substitute Washoe County
12 for the Washoe County Sheriff's Department.

13 IT IS FURTHER ORDERED that the Clerk of the Court shall send to Edwards the
14 approved form for filing a § 1983 complaint and instructions for the same. If Edwards chooses
15 to file an amended complaint, he must use the approved form and he shall write the words
16 "Second Amended" above the words "Civil Rights Complaint" in the caption. The amended
17 complaint must be complete in itself and may not incorporate by reference any part of a prior
18 complaint.

19 DATED this 21st day of May, 2019.

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23 ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE