

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:10cv295**

**JEROME HOUSTON, Administrator
of the Estate of Kenyatta Houston; and
the STATE OF NORTH CAROLINA,
ex rel., Jerome Houston, Administrator
of the Estate of Kenyatta Houston,**

Plaintiffs,

Vs.

**JOHN T. McDEVITT, in his official
capacity as Sheriff of Burke County;
COY REID, in his official capacity as
Sheriff of Catawba County; STEVE
WHISNANT, in his official capacity as
Administrator of the Burke-Catawba
County Detention Facility; LYMAN
MOODY WILLIAMS, in his
individual and official capacities;
JASON DEREK JOHNSON, in his
official capacity; JOHN DOE No. 1, as
surety for the Burke County Sheriff; and
JOHN DOE No. 2, as surety for the
Catawba County Sheriff,**

Defendants.

ORDER

THIS MATTER is before the court on defendant Lyman Moody Williams’s Motion to Dismiss Plaintiff’s Redundant Official capacity Claims (#13), filed January 31, 2011. That same day, such defendant filed his Answer (#12). On February 8, 2011, plaintiffs filed their Amended Complaint (#15), which was within the 21 days allowed by Rule 15(a)(1)(B), Federal Rules of Civil Procedure. By amending the original Complaint, the Motion to Dismiss (#13) became moot as a matter of law and

will not be the subject of a separate recommendation. Taylor v. Abate, 1995 WL 362488, *2 (E.D.N.Y.1995)¹ (“Defendants' motion to dismiss is addressed solely to the original complaint… Consequently, upon the filing of the amended complaint, their motion is mooted and, therefore, denied.”); In re Colonial Ltd. Partnership Litig., 854 F.Supp. 64, 80 (D.Conn.1994) (noting where “a plaintiff amends its complaint while a motion to dismiss is pending” the court may “deny[] the motion as moot”); Rathke v. HCA Management Co., Inc., 1989 WL 161431, at *1 n. 1 (D.Kan.1989) (holding that “motion to dismiss … became moot when plaintiff filed an amended complaint”); Gresham v. Waffle House, Inc., 586 F.Supp. 1442, 1444 n. 1 (N.D.Ga.1984) (same).

ORDER

IT IS, THEREFORE, ORDERED that defendant Lyman Moody Williams’s Motion to Dismiss Plaintiff’s Redundant Official capacity Claims (#13) is **DENIED** without prejudice as moot.

Signed: February 23, 2011



Dennis L. Howell
United States Magistrate Judge



¹ Due to the limits of ECF, copies of unpublished decisions cited in this Order are incorporated into the court record through reference to the Westlaw citation.