

Second, the “Sheriff of Henderson County” is a title, not a person, and only persons in being may be sued under North Carolina law. Coleman v. Cooper, 89 N.C.App. 188, 192 (1988). As a lawsuit cannot be maintained against a title, the suit against “Sheriff of Henderson County” is dismissed.

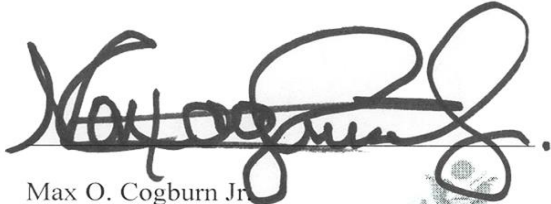
As to Charles McDonald, who is presently the Sheriff of Henderson County, North Carolina, plaintiffs name Sheriff McDonald in the body of their Complaint, but have not included Sheriff McDonald in the caption of their pleading as required under Rule 10(a), Federal Rules of Civil Procedure. See Londeree v. Crutchfield Corp., 68 F.Supp.2d 718 (W.D.Va. 1999). As failure to include “Charles McDonald” in the caption of the Complaint makes the allegations against him in the body of the complaint a nullity, National Commodity and barter Assoc. v. Gibbs, 886 F.2d 1240, 1245 (10th Cir. 1989), the claims against this defendant will be dismissed without prejudice. Plaintiffs will be granted leave to file an amended complaint within 14 days of this Order properly naming “Charles McDonald” in the caption of their amended complaint. Plaintiffs are advised that such naming would typically be “Charles McDonald, in his official capacity as Sheriff of Henderson County, North Carolina.” Plaintiffs are further advised that as the Complaint is now written, there are no allegations that would justify bringing an individual capacity claim against this defendant. See Wright v. Collins, 766 F.2d 841, 850 (4th Cir. 1985).

ORDER

IT IS, THEREFORE, ORDERED that the county defendants’ Motion to Dismiss (#7) is GRANTED, and defendants “Sheriff of Henderson County” and “Henderson County Sheriff’s Office” are dismissed. Defendant Charles McDonald, named only in the body of the Complaint,

is also dismissed, but such dismissal is without prejudice. Plaintiffs are granted leave to file an Amended Complaint within 14 days as instructed herein, and amendments in conformity with such instructions shall relate back to the original date of filing.

Signed: October 7, 2016



Max O. Cogburn Jr.
United States District Judge