

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

PHILLIP CORDELL,

Plaintiff,

:

Case No. 3:10-cv-212

-vs-

District Judge Thomas M. Rose

Magistrate Judge Michael R. Merz

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JOHN DOE MCKINNY, Deputy Sheriff,

Defendant.

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**SUPPLEMENTAL MEMORANDUM**

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This case is before the Court on Plaintiff's Objections (Doc. No. 35) to the Magistrate Judge's Decision and Order of January 17, 2011, which denied leave to file an amended complaint adding Greene County Sheriff Gene Fisher as a defendant (Doc. No. 28). The General Order of Reference for the Dayton location of court permits a magistrate judge to reconsider decisions or reports and recommendations when objections are filed.

Plaintiff's first objection is that a motion to amend is dispositive in nature and therefore not within the decisional authority of a magistrate judge. However, a motion to amend is not listed among the dispositive matters in 28 U.S.C. § 636(b)(1)(A) nor is the Magistrate Judge aware of any case authority declaring such a motion to be dispositive.

Plaintiff's second objection is that his motion for change of venue (Doc. No. 29) has not yet been ruled on. In fact it has been denied (Doc. No. 34). The Court's Judicial Assistant is requested to furnish Plaintiff with another copy of Doc. No. 34 and to docket the fact of doing so.

Plaintiff's third objection is that Sheriff Fisher was already added in his First Amended Complaint and the most recent request to amend was only a formality. Plaintiff's First Amended

Complaint included The Greene County Jail and The Greene County Sheriff in the caption, but does not state any claims for relief against those entities; instead, it asserts four<sup>1</sup> causes of action against Defendant McKinney. On September 20, 2010, the Court advised Mr. Cordell “that the Greene County Jail and the Greene County Sheriff’s Office are not suable entities under Ohio law. Rather, the proper party defendant for those two institutions would be the Greene County Sheriff in his official capacity.” (Notice to Plaintiff, Doc. No. 20, PageID 78). When Mr. Cordell actually moved to add Sheriff Fisher, he did so on a claim of respondeat superior liability (See Doc. No. 27). The Magistrate Judge denied the motion to amend because the Sheriff in either his individual or official capacity cannot be held liable under 42 U.S.C. § 1983 on a respondeat superior theory.

January 20, 2011.

s/ **Michael R. Merz**  
United States Magistrate Judge

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<sup>1</sup>Two of the four causes of action are labeled “Third Cause of Action.”