

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

MELODY L. WILLIAMS,

Plaintiff,

:

Case No. 3:15-cv-388

- vs -

District Judge Thomas M. Rose

Magistrate Judge Michael R. Merz

OHIO DEPARTMENT OF REHABILITATION
AND CORRECTIONS, et al.,

Defendants.

:

REPORT AND RECOMMENDATIONS

This case is before the Court on Defendants' First Motion to Dismiss for failure to state a claim on which relief can be granted (ECF No. 20). Plaintiff, as a *pro se* litigant, was notified that she was required to file a memorandum in opposition not later than May 2, 2016 (Order, ECF No. 21). Rather than doing so, she has filed an Amended Complaint (ECF No. 23).

The filing of the Amended Complaint renders the Motion to Dismiss moot because it is directed at the original Complaint which is no longer an operative pleading. Arguments made in the Motion may or may not be relevant to the First Amended Complaint and Defendants are authorized by the Federal Rules of Civil Procedure to raise any such claims by filing a new

motion to dismiss directed to the Amended Complaint not later than May 16, 2016. Fed. R. Civ. P. 15(a)(1)(3).

It is accordingly respectfully recommended that the First Motion to Dismiss be denied as moot.

May 3, 2016.

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

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).