

UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

|                                |   |                            |
|--------------------------------|---|----------------------------|
| LONNIE SPELLMAN,               | : |                            |
|                                | : |                            |
| Plaintiff                      | : | No. 4:CV-10-2334           |
|                                | : |                            |
| vs.                            | : | (Complaint Filed 12/03/10) |
|                                | : |                            |
|                                | : | (Judge Muir)               |
| JEFFREY BEARD, <u>et al.</u> , | : |                            |
|                                | : |                            |
| Defendants                     | : |                            |

**MEMORANDUM AND ORDER**

May 13, 2011

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

Plaintiff, an inmate confined in the State Correctional Institution, Frackville, Pennsylvania, filed this civil rights action pursuant to 42 U.S.C. § 1983. The named defendants are Secretary Jeffrey Beard, Robert Collins, Michael Lorady, George Evans, Michael Wnerowicz, Thomas Derfler, Anthony Kovalchik, Peter Damiter, Joseph Lukashewski, Michael Thiroway, Ralph Johnson, Kenneth Stutzman, Joanne Miranda, and Victor Mirarchi. Plaintiff complains that he is a non-smoker and that he would prefer not to share his cell with someone who smokes. (Doc. No. 1, complaint). On March 14, 2011 plaintiff filed an amended complaint. (Doc. 13).

Presently pending before the Court is defendants' motion to dismiss the amended complaint. (See Doc. 11). Previously, by order dated April, 21, 2011, this Court directed Plaintiff to file a brief in opposition to Defendants' motions to dismiss on or before May 11, 2011. (See Doc. 18). The Order forewarned Plaintiff that if he failed to file a brief within the required time, the motion would be deemed unopposed and granted without a merits analysis.

Though the deadline for filing an opposing brief has passed, plaintiff has neither filed a brief in opposition to defendants' motion to dismiss nor has he requested an extension of time in which to do so. Consequently, the court will grant Defendants' motion to dismiss without a merits analysis. Cf. Stackhouse v. Mazurkiewicz, 951 F.2d 29, 30 (3d Cir. 1991) (dismissal without merits analysis improper when based solely on noncompliance with local rule requiring plaintiff to respond

to motion to dismiss).<sup>1</sup> An appropriate Order accompanies this Memorandum Opinion.

s/Malcolm Muir \_\_\_\_\_

MUIR

United States District Judge

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1. In Stackhouse, the Third Circuit limited its holding to dismissals used as sanctions for failure to comply with the local rule. 951 F.2d at 30. Moreover, the court suggested that dismissal may be proper where, as in the instant case, a party fails to comply with the local rule after a specific direction to comply by the court. Id

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 : (Judge Muir)  
 JEFFREY BEARD, et al., :  
 :  
 Defendants :

**ORDER**

May 13, 2011

For the reasons set forth in the accompanying Memorandum,

**IT IS HEREBY ORDERED THAT:**

1. Defendants' motion to dismiss plaintiff's amended complaint (Doc. 11) is **GRANTED**.
2. The Clerk of Court shall **CLOSE** this case.
3. Any appeal from this order will be deemed frivolous, without probable cause and not taken in good faith.

s/Malcolm Muir

MUIR

United States District Judge