

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

PHILBERT WILSON,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 13-1529
)	
STATE OF PENNSYLVANIA;)	
DENNIS HOERNER, <i>Probation</i>)	
<i>Officer</i> ; BRIAN COVERT, <i>warden</i> ;)	
MARY ROSETTA, <i>Case manager for</i>)	United States Magistrate Judge
<i>Probation and parole</i> ; CITY OF NEW)	Cynthia Reed Eddy
CASTLE POLICE DEPARTMENT,)	
<i>Unknown New Castle Police officers</i> ;)	
BERTH GREAR, <i>Probation Officer</i> ;)	
PENNSYLVANIA BOARD OF)	
PROBATION AND PAROLE;)	
DONALD M STYLES, <i>Deputy Director</i> ,)	
<i>Pennsylvania Board of Probation</i>)	
<i>and Parole</i>)	
)	
Defendants.)	

ORDER

On September 30, 2014, the Court ordered that on or before October 14, 2014, Plaintiff had to provide the Court with proper instructions for service upon the three Defendants added to the Second Amended Complaint: (1) Bert Brear, Probation Officer; (2) Pennsylvania Board of Probation and Parole; and (3) Donald M Styles, Deputy Director, Pennsylvania Board of Probation and Parole. (ECF No. 47). In a footnote, the Court noted that two of these Defendants appeared differently in the caption than they did in the body of the Second Amended Complaint, and charged Plaintiff with making sure the proper Defendants are served. (*Id.* at n. 3). Plaintiff was advised that “[f]ailure to provide the correct names will be deemed an insufficient excuse by the Court if they are not served, and they will be dismissed from the action without prejudice.” (*Id.*). Likewise, the body of the order stated: “**IT IS FURTHER ORDERED** that failure to

comply with this Order as to any of these Defendants will result in that Defendant being dismissed from the action without prejudice.”

The Court mailed Plaintiff the appropriate forms to effectuate service, and instructed him to complete and return them. The Court received said forms from Plaintiff. The returned forms contained appropriate information for Defendants Gear and the Pennsylvania Board of Probation and Parole. However, Plaintiff did not provide the Court with any information for Defendant Styles, and instead provided information for Danielle Hibberd. Thus, in accordance with this Court’s Order from September 30, 2014 as well as Federal Rule of Civil Procedure 4(m), Defendant Styles is dismissed without prejudice from this lawsuit.

The Court notes that in addition to providing the Court with Danielle Hibberd’s information, Plaintiff provided the Court with a copy of the Second Amended Complaint containing hand-written alterations. Specifically, in every place where Defendant Styles appeared, there was a line crossing out his name, with hand-written text inserting Danielle Hibberd’s name above it. Therefore, it appears as though Plaintiff attempted to amend his complaint for the third time, and wishes to add Danielle Hibberd as a Defendant to his lawsuit. However, this apparent attempt is in contravention of Federal Rule of Civil Procedure 15(a)(2).

Plaintiff is (or should be) aware that in order to amend his complaint or add new parties, he has to file a motion to do so. This is evidenced by the fact that Plaintiff has previously filed two motions with the Court requesting permission to amend his complaint. (ECF Nos. 25, 34). Therefore, the Court will disregard the altered second amended complaint that it received from Plaintiff and will not direct the U.S. Marshal to mail the service documents to Danielle Hibberd.

AND NOW, this 31st day of October , 2014, **IT IS HEREBY ORDERED** that pursuant to this Court's Order from 9/30/2014 (ECF No. 47) and Federal Rule of Civil Procedure 4(m), Donald M Styles is **DISMISSED WITHOUT PREJUDICE** from this lawsuit.

IT IS FURTHER ORDERED that Plaintiff's attempt to add Danielle Hibberd as a party to this action is ineffective.

By the Court:

s/ Cynthia Reed Eddy
Cynthia Reed Eddy
United States Magistrate Judge

cc: PHILBERT WILSON
124 N. Mulberry Street
New Castle, PA 16101

All registered counsel via CM-ECF