

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

GEORGE KEITH MARTIN,

Plaintiff,

v.

//

CIVIL ACTION NO. 1:08CV205
(Judge Keeley)

MIKE CLAXTON, AELX NEVILLE,
JOHN HARE, BRIAN K. PURKEY,
and DOUG YOST,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

On November 19, 2008, the defendants removed this case from the Harrison County Circuit Court where the pro se plaintiff, George Keith Martin, ("Martin") filed his Complaint pursuant to 28 U.S.C. § 1983. The Court referred this matter to United States Magistrate Judge John S. Kaull for initial screening and a Report and Recommendation ("R&R") in accordance with Local Rule of Prisoner Litigation 83.09.

On December 2, 2008, Magistrate Judge Seibert issued an R&R recommending that the Court substitute the Department of Justice (the "DOJ") for the individual defendants in this case, that the Court dismiss the individual defendants with prejudice, and that the case proceed against the DOJ. The R&R also specifically warned that failure to object to it would result in the waiver of any

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appellate rights on this issue. Nevertheless, Martin failed to file any objections.¹

Consequently, the Court **ADOPTS** the Report and Recommendation in its entirety (dkt. no. 3), **SUBSTITUTES** the DOJ for the individual defendants, **DISMISSES WITH PREJUDICE** the claims against the individual defendants Mike Claxton, Alex Neville, John Hare, Brian K. Purkey, and Doug Yost, and **ORDERS** the Clerk to serve the DOJ with a copy of a summons and the Complaint by first class United States mail, return receipt requested. It further **ORDERS** that the DOJ file a response to Martin's Complaint, pursuant to Federal Rule of Civil Procedure 12(a)(1)(2), within sixty (60) days of service of the Complaint and **REFERS** this case back to Magistrate Judge Kaull for further consideration of the issues in this case.

The Clerk is directed to mail a copy of this Order to the pro se plaintiff, certified mail, return receipt requested, and to transmit copies of this Order to all counsel of record.

Dated: February 11, 2009.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE

¹ Martin's failure to object to the R&R not only waives his appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).