

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MICHAEL LINDSEY GAMBUZZA,
etc., et al.,

CASE NO. 8:09-cv-1891-T-17TBM

Plaintiff,

v.

JAMES HIGGINBOTHAM, etc., et al.,

Defendants.

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DEFENDANTS MOTION TO DISMISS
(AND MEMORANDUM OF LAW)

The Defendant, LIEUTENANT DIANE PARMENTER, CAPTAIN ANTHONY ACKLES, MAJOR JAMES HIGGINBOTHAM, in their official capacities, through their undersigned attorneys, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, files this his Motion to Dismiss, and as grounds therefore would state as follows:

1. On or about September 4, 2010, the Plaintiff, who was proceeding *pro se*, filed his §1983 Civil Rights Complaint alleging violations of his rights secured by the United States Constitution. [D.E. #1]. Specifically, he alleged that the “postcards-only” mail policy at the Manatee County Jail violated his constitutional rights.

2. On or about October 26, 2010, Katherine Yanes, James E. Felman, and Kynes, Markman, and Felman, P.A. filed their Motion to Be Appointed as *Pro Bono* Counsel [D.E. #6], which was granted by the Court on October 28, 2010. [D.E. #7].

3. On or about February 18, 2010, Plaintiff filed his Amended Complaint naming LIEUTENANT DIANE PARMENTER, CAPTAIN ANTHONY ACKLES, MAJOR JAMES HIGGINBOTHAM, and SHERIFF BRAD STEUBE as defendants, in their official capacities. [D.E.# 10].

4. It is duplicitous to name all four (4) of these Defendants in their official capacities. Therefore, the Plaintiff's Amended Complaint should be dismissed as to Defendants LIEUTENANT DIANE PARMENTER, CAPTAIN ANTHONY ACKLES, MAJOR JAMES HIGGINBOTHAM, in their official capacities.

WHEREFORE, the Defendants respectfully request this Honorable Court grant this Motion dismissing the Plaintiff's Amended Complaint with prejudice.

Further, and in support of this Motion, the Defendants would refer the Court to the Memorandum of Law attached hereto, and by reference, made a part hereof.

MEMORANDUM OF LAW

“[W]hen an officer is sued under Section 1983 in his or her official capacity, the suit is simply ‘another way of pleading an action against an entity of which an officer is an agent.’” See Busby v. City of Orlando, 931 F.2D 764, 776 (11th Circuit 1991)(quoting Kentucky v. Graham, 473 U.S. 159, 165 (1985)). “Such suits against municipal officers are therefore, in actuality, suits against the [agency] that the officer represents. See Busby v. City of Orlando at 776. In the present case, the Plaintiff has named four (4) employees of the

Manatee County Sheriff's Office solely in their official capacities, including the Sheriff¹. In naming the four (4) Defendants in their official capacities, the Plaintiff essentially has brought suit against the Manatee County Sheriff's Office four (4) times. As such, allowing the Complaint to progress against Defendants Higginbotham, Ackles, and Parmenter, in their official capacities, is unnecessary and redundant.

CONCLUSION

Plaintiff's Amended Complaint should be dismissed as to Defendants Higginbotham, Ackles, and Parmenter, in their official capacities, with prejudice.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed a copy of the foregoing with the Clerk of the Court by using the CM/ECF system, which will forward a true and correct copy of the foregoing to: Katherine Earle Yanes, Esquire, KYNES, MARKMAN & FELMAN, P.A., Post Office Box 3396, Tampa, Florida 33601-3396, this 15th day of April, 2010.

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By: *s/a: Jason L. Scarberry*
JASON L. SCARBERRY
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¹The proper Defendant is "Brad Steube, as Sheriff of Manatee County."