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APPEAL,CASREF

U.S. District Court
Eastern District of Oklahoma (Muskogee)
CIVIL DOCKET FOR CASE #: 6:16-cv-00440-JHP-SPS

Johnson v. Marlar
Assigned to: District Judge James H. Payne
Referred to: Magistrate Judge Steven P. Shreder
Case in other court: OKED, 14cv308,10cv107,02cv
10th Circuit, 19-07023
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 10/14/2016
Date Terminated: 04/19/2019
Jury Demand: None
Nature of Suit: 550 Prisoner: Civil
Rights
Jurisdiction: Federal Question

Plaintiff**Dexter Leemon Johnson**

represented by **Dexter Leemon Johnson**
244661
Oklahoma State Penitentiary
PO Box 97
McAlester, OK 74502-0097
PRO SE

V.

Defendant

Dr. John Marlar
Prison Doctor OSP

represented by **Kari Y. Hawkins**
Office of the Attorney General (OKC)
313 NE 21st St
Oklahoma City, OK 73105
405-522-2976
Fax: 405-521-4518
Email: kari.hawkins@oag.ok.gov
ATTORNEY TO BE NOTICED

Defendant

Patricia Sorrels
Correctional Health Services
Administrator
TERMINATED: 05/16/2017

Date Filed	#	Docket Text
10/14/2016	1	COMPLAINT against All Defendants by Dexter Leemon Johnson (acg, Deputy Clerk) (Main Document 1 replaced on 10/14/2016) (acg, Deputy Clerk). (Entered: 10/14/2016)
10/14/2016	2	MOTION for Leave to Proceed in Forma Pauperis by Dexter Leemon Johnson

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		Responses due by 10/28/2016(acg, Deputy Clerk) (Main Document 2 replaced on 10/14/2016) (acg, Deputy Clerk). (Entered: 10/14/2016)
10/14/2016	<u>3</u>	MOTION for Appointment of Counsel by Dexter Leemon Johnson Responses due by 10/28/2016(acg, Deputy Clerk) (Entered: 10/14/2016)
10/14/2016	<u>4</u>	MINUTE ORDER by District Judge James H. Payne, referring case to Magistrate Judge Steven P. Shreder for all further proceedings in accordance with their jurisdiction pursuant to 28 USC 636. All future filings shall bear the case number CIV-16-440-JHP-SPS. (acg, Deputy Clerk) (Entered: 10/14/2016)
10/17/2016	<u>5</u>	ORDER by District Judge James H. Payne : Granting <u>2</u> plaintiff's Motion for Leave to Proceed in Forma Pauperis. Filing Fee due by 11/7/2016. (acg, Deputy Clerk) (Entered: 10/17/2016)
10/17/2016	<u>6</u>	OPINION AND ORDER by District Judge James H. Payne : Denying <u>3</u> plaintiff's Motion for Appointment of Counsel. (acg, Deputy Clerk) (Entered: 10/17/2016)
11/02/2016	<u>7</u>	LETTER from OKED to Plaintiff re: 285 forms(acg, Deputy Clerk) (Entered: 11/02/2016)
11/02/2016		PARTIAL FILING FEES Paid on 11/2/2016 in the amount of \$5.00, receipt number 13163 by Dexter Leemon Johnson (pjw, Deputy Clerk) (Entered: 11/02/2016)
11/16/2016	<u>8</u>	MOTION requesting court to Order defendants to file Special Report with their answer by Dexter Leemon Johnson Responses due by 11/30/2016(acg, Deputy Clerk) (Entered: 11/16/2016)
11/16/2016	<u>9</u>	MINUTE ORDER by Court Clerk : Entering Order directing the Clerk of the Court to have summons issued for the named defendants and forward the summons to U.S. Marshal for service. The plaintiff has been granted In Forma Pauperis status.(acg, Deputy Clerk) (Entered: 11/16/2016)
11/16/2016	<u>10</u>	SUMMONS Issued by Court Clerk as to John Marlar (acg, Deputy Clerk) (Entered: 11/16/2016)
11/16/2016	<u>11</u>	SUMMONS Issued by Court Clerk as to Patricia Sorrels by Dexter Leemon Johnson (acg, Deputy Clerk) (Entered: 11/16/2016)
12/02/2016	<u>12</u>	SUMMONS Returned Executed re: John Marlar - Served on 11/28/2016. (acg, Deputy Clerk) (Entered: 12/02/2016)
12/21/2016	<u>13</u>	SUMMONS Returned Unexecuted re: Patricia Sorrels, unable to serve, invalid address(acg, Deputy Clerk) (Entered: 12/21/2016)
01/03/2017	<u>14</u>	MOTION for Default Judgment against Dr. John Marlar by Dexter Leemon Johnson Responses due by 1/17/2017(acg, Deputy Clerk) (Entered: 01/03/2017)
03/09/2017	<u>15</u>	NOTICE of matter under advisement for more than 60 days. by Dexter Leemon Johnson (acg, Deputy Clerk) (Entered: 03/09/2017)
03/13/2017	<u>16</u>	MINUTE ORDER by District Judge James H. Payne: Directing Defendant Dr.

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		John Marlar to show cause in writing within fourteen (14) days why Plaintiffs motion for a default judgment (Dkt. 14) should not be granted. Failure to show cause as directed may result in a default judgment against Defendant Marlar. See Rule 55 of the Federal Rules of Civil Procedure. (acg, Deputy Clerk) (Entered: 03/13/2017)
03/13/2017	<u>17</u>	MINUTE ORDER by Magistrate Judge Steven P. Shreder : Directing Plaintiff to show cause in writing within fourteen (14) days why Defendant Patricia Sorrels should not be dismissed from this action for Plaintiffs failure to serve her within 90 days after filing the complaint, pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. Failure to show cause as directed will result in dismissal of Defendant Patricia Sorrels from this action.(acg, Deputy Clerk) (Entered: 03/13/2017)
03/23/2017	<u>18</u>	RESPONSE to Order to Show Cause (Re: 17 Minute Order,, Directing Party to Show Cause,) by Dexter Leemon Johnson (acg, Deputy Clerk) (Entered: 03/23/2017)
04/05/2017	<u>19</u>	MOTION for Default Judgment against John Marlar by Dexter Leemon Johnson Responses due by 4/19/2017(acg, Deputy Clerk) (Entered: 04/05/2017)
04/05/2017	<u>20</u>	MOTION to Dismiss Party Patricia Sorrels by Dexter Leemon Johnson Responses due by 4/19/2017(acg, Deputy Clerk) (Entered: 04/05/2017)
05/11/2017	<u>21</u>	MOTION for confession of judgment against defendant John Marlar pursuant to Local Civil Rule 7.1(g) by Dexter Leemon Johnson Responses due by 5/25/2017(acg, Deputy Clerk) (Entered: 05/11/2017)
05/16/2017	<u>22</u>	MINUTE ORDER by District Judge James H. Payne : Granting <u>20</u> Motion to voluntarily dismiss Party dismissing Patricia Sorrels. (acg, Deputy Clerk) (Entered: 05/16/2017)
06/15/2017	<u>23</u>	MOTION to Amend (Re: <u>1</u> Complaint) to add defendants by Dexter Leemon Johnson Responses due by 6/29/2017(acg, Deputy Clerk) (Entered: 06/15/2017)
07/11/2017	<u>24</u>	NOTICE of matter under advisement for more than 90 days pursuant to LCvR 7.1(1) by Dexter Leemon Johnson (acg, Deputy Clerk) (Entered: 07/11/2017)
07/26/2017	<u>25</u>	MINUTE ORDER by Magistrate Judge Steven P. Shreder : Denying <u>8</u> plaintiffs motion for order requiring special report. Plaintiff has not yet served the defendant. (acg, Deputy Clerk) (Entered: 07/26/2017)
07/26/2017	<u>26</u>	MINUTE ORDER by District Judge James H. Payne: Directing Defendant Dr. John Marlar to show cause in writing within fourteen (14) days why Plaintiffs motion for default judgment <u>19</u> and Plaintiffs motion for confession of judgment <u>21</u> should not be granted. Failure to show cause as directed may result in judgment against Defendant Dr. John Marlar. Response to Order to Show Cause due by 8/9/2017.(acg, Deputy Clerk) (Entered: 07/26/2017)
07/26/2017	<u>27</u>	MINUTE ORDER by District Judge James H. Payne : Denying <u>23</u> Plaintiffs motion to amend complaint. Plaintiff is asking to add a defendant and claims concerning alleged retaliation by a prison official for Plaintiffs filing this

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		<p>complaint. The alleged retaliation occurred more than six months after the filing of this complaint and consisted of disabling the cable television in Plaintiffs cell. Plaintiff must file a second civil rights complaint pursuant to 42 U.S.C. § 1983 to raise these claims. Forms for filing a new civil rights complaint are available from the Court Clerks office. (acg, Deputy Clerk) (Entered: 07/26/2017)</p>
08/02/2017	<u>28</u>	CERTIFIED MAIL Return Receipt Received from Dr. John Marlar (Re: Minute Order 26)(acg, Deputy Clerk) (Entered: 08/02/2017)
08/09/2017	<u>29</u>	ATTORNEY APPEARANCE by Kari Y. Hawkins on behalf of John Marlar (Hawkins, Kari) (Entered: 08/09/2017)
08/09/2017	<u>30</u>	RESPONSE to Order to Show Cause (Re: 26 Minute Order, Directing Party to Show Cause) by John Marlar (With attachments)(Hawkins, Kari) (Entered: 08/09/2017)
08/24/2017	<u>31</u>	REPLY to defendant John Marlar response to court order (Re: 26 Minute Order, Directing Party to Show Cause) by Dexter Leemon Johnson (acg, Deputy Clerk) (Entered: 08/24/2017)
08/31/2017	<u>32</u>	MINUTE ORDER by Magistrate Judge Steven P. Shreder:Plaintiff's Motion for Default Judgment <u>19</u> and Motion for confession of judgment <u>21</u> against John Marlar are denied because Defendant Marlar has not been properly served. See Fed.R.Civ.P. 4(e)(1) and 12 O.S. § 2004(C)(2)(b). Defendant Marlar is hereby given fourteen (14) days to file an answer to Plaintiff's Complaint. (acg, Deputy Clerk) (Entered: 08/31/2017)
08/31/2017	<u>33</u>	AMENDED MINUTE ORDER by Magistrate Judge Steven P. Shreder : Plaintiff's Motions for Default Judgment <u>14</u> <u>19</u> and Motion for confession of judgment <u>21</u> against John Marlar are denied because Defendant Marlar has not been properly served. See Fed.R.Civ.P. 4(e)(1) and 12 O.S. § 2004(C)(2)(b). Defendant Marlar is hereby given fourteen (14) days to file an answer to Plaintiff's Complaint. (acg, Deputy Clerk) (Entered: 08/31/2017)
09/13/2017	<u>34</u>	MOTION to Stay and for Special Report by John Marlar Responses due by 9/27/2017(Hawkins, Kari) (Entered: 09/13/2017)
09/14/2017	<u>35</u>	MOTION for Temporary Restraining Order and injunction pursuant to FRCP 65. by Dexter Leemon Johnson Responses due by 9/28/2017(acg, Deputy Clerk) (Entered: 09/14/2017)
09/14/2017	<u>36</u>	MOTION for Evidentiary Hearing and Objection to Magistrate judge's denial of his motion for default and confession of judgment (Re: 32 33) pursuant to FRCP 72(b)(2) by Dexter Leemon Johnson Responses due by 9/28/2017(acg, Deputy Clerk) (Entered: 09/14/2017)
09/14/2017	<u>37</u>	MINUTE ORDER by District Judge James H. Payne : Striking Plaintiffs motion for evidentiary hearing and objection to Magistrate Judges denial of motions for default and confession of judgment pursuant to Fed. R. Civ. P. 72 (b)(2) <u>36</u> , because the pleading is a two-part request for relief. Pursuant to Local Civil Rule 7.1(b)(2), [e]ach motion, application, or objection filed shall

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		be a separate pleading, except where alternative pleading is allowed by law or [Local] Rules. Furthermore, Fed. R. Civ. P. 72(b)(2) concerns objections to a Magistrate Judges proposed findings and recommendations. The minute orders to which Plaintiff objects 32 33 were orders, not proposed findings and recommendations. (acg, Deputy Clerk) (Entered: 09/14/2017)
09/14/2017 	<u>38</u>	ORDER by Magistrate Judge Steven P. Shreder : Granting <u>34</u> Motion to Stay Proceedings and requiring Special Report and striking <u>35</u> Motion for Temporary Restraining Order (acg, Deputy Clerk) (Entered: 09/14/2017)
11/13/2017	<u>39</u>	MOTION to Seal Document (Special Report Attachments 6, 7 and 8) by John Marlar Responses due by 11/27/2017(Hawkins, Kari) (Entered: 11/13/2017)
11/13/2017	<u>40</u>	MINUTE ORDER by Magistrate Judge Steven P. Shreder: Granting <u>39</u> Defendant Marlar's Motion to Seal Document. (acg, Deputy Clerk) (Entered: 11/13/2017)
11/13/2017	<u>41</u>	SPECIAL REPORT by John Marlar (With attachments)(Hawkins, Kari) (Entered: 11/13/2017)
11/13/2017	<u>42</u>	MOTION for Summary Judgment by John Marlar Responses due by 11/27/2017(Hawkins, Kari) (Entered: 11/13/2017)
11/16/2017	<u>43</u>	SEALED DOCUMENTS Attachments 6,7,8 to the Special Report <u>41</u> filed by the defendant. (acg, Deputy Clerk) (Entered: 11/16/2017)
11/29/2017	<u>44</u>	RESPONSE to Motion (Re: <u>42</u> MOTION for Summary Judgment) by Dexter Leemon Johnson ;(acg, Deputy Clerk) (Entered: 11/29/2017)
01/19/2018	<u>45</u>	MOTION to substitute party pursuant to FRCP 25(d) by Dexter Leemon Johnson Responses due by 2/2/2018(acg, Deputy Clerk) (Entered: 01/19/2018)
10/15/2018	<u>46</u>	NOTICE of matter under advisement for more than 90 days pursuant to LCvR7.1(1) by Dexter Leemon Johnson (acg, Deputy Clerk) (Entered: 10/15/2018)
12/19/2018	<u>47</u>	MOTION to Supplement (Re: <u>44</u> Response to Motion) by Dexter Leemon Johnson Responses due by 1/2/2019(acg, Deputy Clerk) (Entered: 12/19/2018)
02/14/2019	<u>48</u>	NOTICE of matter under advisement more than 90 days pursuant to LCvR7.1 (1) by Dexter Leemon Johnson (acg, Deputy Clerk) (Entered: 02/14/2019)
03/29/2019	<u>49</u>	MINUTE ORDER by District Judge James H. Payne : Denying <u>45</u> plaintiff's Motion to Substitute Party. (acg, Deputy Clerk) (Entered: 03/29/2019)
04/19/2019	<u>50</u>	OPINION AND ORDER by District Judge James H. Payne : Granting <u>42</u> Motion for Summary Judgment and all pending motions are denied as moot. <u>47</u> (acg, Deputy Clerk) (Entered: 04/19/2019)
04/19/2019	<u>51</u>	JUDGMENT by District Judge James H. Payne entering judgment in favor of John Marlar, Defendant and against Dexter Leemon Johnson, Plaintiff. (terminates case) (acg, Deputy Clerk) (Entered: 04/19/2019)
04/29/2019	<u>52</u>	NOTICE OF APPEAL to Circuit Court (Re: <u>50</u> Ruling on Motion for Summary

		Judgment, Ruling on Motion to Supplement, <u>51</u> Judgment) by Dexter Leemon Johnson (acg, Deputy Clerk) (Entered: 04/29/2019)
04/29/2019	<u>53</u>	MINUTE ORDER by Magistrate Judge Steven P. Shreder:Upon review of the file in this case, the Court finds that the plaintiff has not submitted a proper motion for leave to proceed in forma pauperis for appeal purposes or paid the \$505.00 filing fee. The plaintiff is directed to submit a properly executed motion for leave to proceed in forma pauperis for the appeal, with original signature and have the Trust Fund Officer at his/her facility complete (with an original signature) the Required Certification of Statement of Institutional Accounts and provide a current 6-month financial accounting statement and return the completed motion to the Office of the Clerk or pay the filing fee of \$505.00 within 20 days or by 5/20/19. The Clerk is directed to provide the plaintiff with a motion for leave to proceed in forma pauperis form and an instruction sheet.(acg, Deputy Clerk) (Entered: 04/29/2019)
04/29/2019	<u>54</u>	Transmission of Notice of Appeal and Docket Sheet to U.S. Court of Appeals. Pro Se Appeal Packet mailed to Petitioner (Re: <u>52</u> Notice of Appeal - Final Judgment) (With attachments)(jcb, Deputy Clerk) (Entered: 04/29/2019)
04/29/2019	<u>55</u>	APPEAL NUMBER INFORMATION from Circuit Court assigning Case Number 19-7023 (Re: <u>52</u> Notice of Appeal - Final Judgment) (jcb, Deputy Clerk) (Entered: 04/29/2019)
05/02/2019	<u>56</u>	NOTICE statement of issues being appealed (Re: <u>52</u> Notice of Appeal - Final Judgment) by Dexter Leemon Johnson (acg, Deputy Clerk) (Entered: 05/02/2019)
05/10/2019	<u>57</u>	MOTION for Leave to Appeal in Forma Pauperis (Re: <u>52</u> Notice of Appeal - Final Judgment) by Dexter Leemon Johnson Responses due by 5/24/2019(acg, Deputy Clerk) (Entered: 05/10/2019)
05/10/2019	<u>58</u>	ORDER by District Judge James H. Payne : Granting <u>57</u> Motion for Leave to Appeal in Forma Pauperis. Plaintiff shall pay an initial partial filing fee of \$40.12 due by 5/30/2019. (acg, Deputy Clerk) (Entered: 05/10/2019)
05/23/2019		PARTIAL FILING FEES Paid on 5/23/2019 in the amount of \$40.12, receipt number 16777 by Dexter Leemon Johnson (pjw, Deputy Clerk) (Entered: 05/23/2019)

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Exhibit B, p. 1 of 2

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

DEXTER LEEMON JOHNSON,)
)
)
Plaintiff,)
)
vs.) Case No. CIV-16-440-JHP-SPS
)
JOHN MARLAR,)
)
Defendant.)

AFFIDAVIT OF JOHN MARLAR

STATE OF OKLAHOMA)
)
COUNTY OF PITTSBURG)

ss.

I, John Marlar, the undersigned, being duly sworn, depose and state:

1. I am over the age of 18 years old and make the following statements based upon my personal knowledge.
2. On or about August 2, 2017, I received a Minute Order (Doc. No. 26) in the above-styled matter which brought to my attention the fact that a Summon and Petition addressed to me were served via Certified Mail, Restricted Delivery, on November 28, 2016 at the Oklahoma State Penitentiary.

3. These items were signed for by Mandi Morgan, as indicated on the green card at Doc. No. 12.

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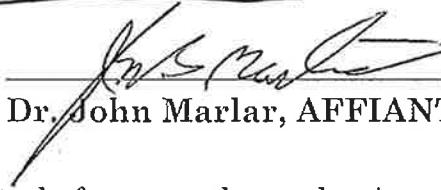
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4. At the time she accepted service, Mandi Morgan worked at the Oklahoma State Penitentiary as a Correctional Officer working light duty in the facility mail room.

5. For reasons unbeknownst to me, I never received a copy of the Summons and Petition that were served on November 28, 2016. Accordingly, I was unaware that I had been sued in the above-styled action prior to receiving the Minute Order at Doc. No. 26. Therefore, I never requested representation from the Oklahoma Office of the Attorney General.

6. My failure to appear in this matter and timely file an Answer was not in bad faith or for any improper purpose.

Dated this 4 day of August, 2017.

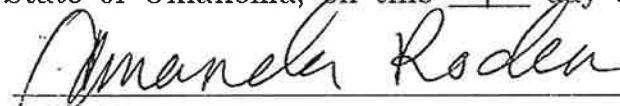

Dr. John Marlar, AFFIANT

Subscribed and sworn to before me, the undersigned Notary Public in and for the County of Pittsburg, State of Oklahoma, on this 4 day of August, 2017.



[SEAL]

My Commission Expires: 3/21/21


Amanda Roden
NOTARY PUBLIC

My Commission Number: #17002724

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Oklahoma Department of Corrections

Oklahoma Department of Corrections Private and DOC: ODOC Formulary Group
Number:

JOHNSON, DEXTER

OK DoC Offender ID 244661
06/13/1974 (43) M African
American
Oklahoma State Penitentiary

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PERIODIC PHYSICAL EXAMINATION (NON- CHRONIC CLINIC) - 04/26/17 09:02 AM

VISIT TYPE:

Examination Type Periodic Physical Examination;

SUBJECTIVE DATA:

Offender Complaints: No;

Previous Medical History: internal hemorrhoids with bleeding

Previous Surgical History: hemorrhoidectomy

New Family History Since Last Visit: No;

Obstetrical / GYN History: Not Applicable;

History of Smoking: Yes;

Currently a Smoker: No;

History of Oral Tobacco Use: No;

History of substance use: Yes;

Describe: mj

OBJECTIVE DATA:

History of Present Illness (PHI): i/m had bleeding from his internal hemorrhoids and was causing i/m to be anemic. i/m had surgery and has no complaints of blood in stool. i/m has no abdominal pain.

General Assessment:

i/m in good spirits, has no outward sign of discomfort. i/m reports that he has no blood in stool.

Skin:

Normal

Lymph Nodes: Normal;

HEENT: Normal;

Pulmonary:

Normal

Cardiovascular:

Normal

Abdomen:

Normal

Musculoskeletal:

Normal

Neurological: Normal;

DIAGNOSIS:

Diagnosis: well exam/ hemorrhoid issue resolved.

PLAN:

Plan: will draw a cbc to check i/m H/H for anemia.

EDUCATION:

Offender Education: Medication; Exercise; Disease Process; Risk & Benefits; Goals; Signs & Symptoms To Report; Treatment Options;

Offender Verbalizes Understanding: Yes;

CO-PAYMENT ASSIGNMENT ONLY (Select procedure 99211-office visit and/or medication(s) for co-payment)

Encounter: PERIODIC PHYSICAL EXAMINATION (NON- CHRONIC CLINIC)

The contents of this document are confidential and restricted to authorized personnel of the Oklahoma Department of Corrections.

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2

Oklahoma Department of Corrections

Oklahoma Department of Corrections Private and DOC: ODOC Formulary Group
Number:

JOHNSON, DEXTER

OK DoC Offender ID 244661
06/13/1974 (43) M African
American
Oklahoma State Penitentiary

Date/Time of Service: 04/26/17 09:02 AM

Location of Service: Oklahoma State Penitentiary

Provider: John Marlar, DO Authorizing Provider: John Marlar, DO

Signed Electronically by John Marlar, DO on 04/26/17 09:08 AM



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Exhibit C, p. 2 of 2

The contents of this document are confidential and restricted to authorized personnel of the Oklahoma Department of Corrections.

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<https://ehr.docsynergy.com/DocSynergy/CentralMR/NotePrint.aspx?PatientUserCode=10...> 10/30/2017