

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

MARY BETH KNUDSEN,

Plaintiff,

-vs-

Case No. 6:09-cv-1060-Orl-31GJK

**DAVID HIGGINS, individually and
BEN F. JOHNSON, in his official capacity
as VOLUSIA COUNTY SHERIFF,**

Defendants.

ORDER


This matter comes before the Court on the Motion to Dismiss (Doc. 9) filed by Defendant Ben F. Johnson (“Johnson”), who has been sued in his official capacity as Volusia County Sheriff. This is a Section 1983 case. Johnson points out, properly, that a Section 1983 suit against a sheriff in his official capacity is tantamount to suit against the governmental entity involved. *See, e.g., Jones v. Cannon*, 174 F.3d 1271, 1293 n. 15 (11th Cir. 1999). Relying on this principle, Johnson argues that this case should be dismissed, for two reasons: because the Plaintiff named him as a defendant rather than Volusia County, and because service of process was accomplished on him rather than on the Chair of the Volusia County Council, as required to perfect service on a state or local government under Fed.R.Civ.P. 4(j). (Doc. 9 at 3-4).

The case law does not require the substitution of the pertinent governmental entity for the sheriff. To the contrary, official capacity suits are simply “another way of pleading an action against an entity of which an officer is an agent.” *Kentucky v. Graham*, 473 U.S. 159, 165 (1985).

“As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than the name, to be treated as a suit against the entity.” *Id.* at 166. Johnson does not argue that the County lacks notice or an opportunity to respond. Accordingly, it is hereby

ORDERED that this frivolous Motion to Dismiss (Doc. 9) is **DENIED**.

DONE and **ORDERED** in Chambers, Orlando, Florida on August 4, 2009.


GREGORY A. PRESNELL
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Party