

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

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MIZELL MCMULLIN, #106 297

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Plaintiff,

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v.

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2:08-CV-502-TMH  
(WO)

TROY KING, ALABAMA  
ATTORNEY GENERAL,

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Defendant.

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**RECOMMENDATION OF THE MAGISTRATE JUDGE**

This 42 U.S.C. § 1983 action was filed by Plaintiff on June 26, 2008. On June 30, 2008 the court entered an order of procedure which instructed Plaintiff, among other things, to inform the court of any change in his address. (*Doc. No. 4*, ¶5(h).) The order further informed Plaintiff that his failure to comply with this requirement would result in a Recommendation that this case be dismissed. (*Id.*)

It recently came to the court's attention that Plaintiff is no longer residing at the address he provided to the court when he filed this complaint. Consequently, the court entered an order on May 7, 2009 directing Plaintiff to provide the court with his present address on or before May 18, 2009. (*Doc. No. 14*.) Plaintiff was cautioned that his failure to comply with the court's May 7 order would result in a recommendation that this case be dismissed. (*Id.*) Plaintiff's copy of the court's May 7 order was returned to the court marked as undeliverable. As it appears clear that Plaintiff is no longer residing at the most recent

address he provided to the court and that he has not provided this court with a new address, the undersigned concludes that dismissal of the complaint at this juncture is appropriate.

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that this case be DISMISSED without prejudice for Plaintiff's failures to prosecute this action properly and to comply with the orders of this court.

It is further

ORDERED that the parties are DIRECTED to file any objections to the Recommendation on or before **June 3, 2009**. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which a party objects. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar the party from a *de novo* determination by the District Court of issues covered in the report and shall bar the party from attacking on appeal factual findings in the report accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5<sup>th</sup> Cir. 1982). *See Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11<sup>th</sup> Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11<sup>th</sup> Cir. 1981, *en banc*), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on

September 30, 1981.

Done, this 18<sup>th</sup> day of May 2009.

/s/Terry F. Moorer  
TERRY F. MOORER  
UNITED STATES MAGISTRATE JUDGE