

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

JAMES DAVID WHEAT

PLAINTIFF

v.

Civil No. 4:09-cv-04036

DEPUTY JONES, Miller County
Jail; CORPORAL HOGAN,
Miller County Jail; JAILER
DOUG ARNOLD, Miller
County Jail; FORMER SHERIFF
LINDA RAMBO; and FORMER
JAIL ADMINISTRATOR
JANICE NICHOLSON

DEFENDANTS

REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE

Plaintiff, James David Wheat, filed this action pursuant to the provisions of 42 U.S.C. § 1983. He proceeds *pro se* and *in forma pauperis*. Pursuant to the provisions of 28 U.S.C. § 636(b)(1) and (3)(2007), the Honorable Harry F. Barnes, United States District Judge, referred this case to the undersigned for the purpose of making a report and recommendation.

On August 7, 2009, a suggestion of death was filed on behalf of Deputy Jaycen Jones (Doc. 15). The death certificate was attached noting he had died on December 14, 2008. Pursuant to Rule 25 of the Federal Rules of Civil Procedure, a party may file a motion to substitute the proper party if a cause of action survives the cause of death of a party.

On August 11, 2009, an order (Doc. 18) was entered giving Plaintiff until September 10, 2009, to notify the court if he desired to substitute the estate or personal representative of Deputy Jones as a Defendant in place of Deputy Jones or if he merely desired to proceed against the remaining Defendants. To date, Plaintiff has not responded to the order.

Accordingly, I recommend that the claims against Defendant Jones be dismissed. **The parties have ten (10) days from receipt of this report and recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may**

result in waiver of the right to appeal questions of fact. The parties are reminded that objections must be both timely and specific to trigger de novo review by the district court.

DATED this 21st day of September 2009.

/s/ Barry A. Bryant
HON. BARRY A. BRYANT
UNITED STATES MAGISTRATE JUDGE