

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

MICHAEL BENJAMIN

PLAINTIFF

v.

Civil No. 08-5134

OFFICER CHANDLER,
Fayetteville Police Department

DEFENDANT

O R D E R

NOW on this 6th day of August 2010, comes on for consideration the **Report and Recommendation of the Magistrate Judge** (document #42), filed on April 13, 2010, and Plaintiff's objections thereto (document #43). Also before the Court is Defendant's **Motion to Strike** Plaintiff's objections (document #45). The Court has reviewed the Report and Recommendation and, being well and sufficiently advised, finds as follows:

1. Plaintiff, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983.
2. On August 27, 2009, Defendant filed a motion for summary judgment. The Magistrate Judge entered an order directing that Plaintiff complete an attached questionnaire that would serve as his response to the summary judgment motion.
3. Plaintiff failed to comply with the Magistrate Judge's order, alleging that the jail was withholding his legal mail. Thus, the Magistrate Judge gave Plaintiff a second opportunity and resent to the Plaintiff the summary judgment motion as well as the questionnaire. The Magistrate Judge ordered that Plaintiff return

the questionnaire by March 29, 2010. The Magistrate Judge advised Plaintiff that, if he failed to comply with her order, his case would be subject to summary dismissal for failure to prosecute.

4. Plaintiff did not comply with the Magistrate Judge's order and, to date, has not returned the completed questionnaire.

5. On April 13, 2009, the Magistrate Judge entered her Report and Recommendation in which she recommended that this case be dismissed on the grounds that Plaintiff has failed to prosecute this action and failed to comply with an order of the Court.

6. The Court has reviewed Plaintiff's objections and finds that he has failed to provide any explanation for his refusal to comply with the Magistrate Judge's order. Further, he has offered neither law nor fact requiring departure from the Report and Recommendation.

7. Therefore, the Court, having carefully reviewed the Magistrate Judge's Report and Recommendation, finds that it is sound in all respects and that the same should be adopted *in toto*.

IT IS THEREFORE ORDERED that the **Magistrate Judge's Report and Recommendation is adopted *in toto***.

IT IS FURTHER ORDERED that, for the reasons stated in the Magistrate Judge's Report and Recommendation, Plaintiff's case is hereby dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for failure to prosecute and failure to comply with the Court's orders.

IT IS FURTHER ORDERED that Defendant's **Motion to Strike**
(document #45) is **moot**.

IT IS SO ORDERED.

/s/ Jimm Larry Hendren
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE