

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

MARK WEAVER

PLAINTIFF

v.

CASE No. 08-5167

CAPTAIN PETRAY,  
DEPUTY JOHNSON,  
DEPUTY MORRISON,  
DEPUTY JOHNSTON,  
DEPUTY ROLAND,  
DEPUTY RANKIN,  
DEPUTY WALES,  
DEPUTY ELKINGTON,  
DEPUTY TUCKER,  
DEPUTY LOCKHART,  
DEPUTY ENGLEMAN,  
DEPUTY WRIGHT,  
DEPUTY GONZALES,  
DEPUTY COLTS,  
DEPUTY BLAGG,  
DEPUTY EWING,  
DEPUTY STRICKLAND,  
DEPUTY MRS. B,  
DEPUTY BAILEY,  
DEPUTY BARR,  
SARGENT CARLTON,  
SARGENT VAUGHN,  
SARGENT ROBBINS,  
SARGENT TORRES,  
LT. CARTER, and  
SHERIFF KEITH FERGUSON

DEFENDANTS

REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE

Now before the Court is the First Motion for Summary Judgment by Defendants Johnson, Morrison, Johnston, Roland, Rankin, Wales, Elkington, Tucker, Lockhart, Engleman, Wright, Blugg, Carlton, Ewing, Strickland, Bailey, Bar, Vaughn, Robbins, Torres, Ferguson, Petray, and Carter. (Doc. 34).<sup>1</sup>

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<sup>1</sup> Although the practice of the undersigned in Section 1983 prisoner pro se cases such as this is to Order Summary Judgment be filed by the Defendants in the instances where such a motion is deemed appropriate, this Motion for Summary Judgment was filed on Defendants' own initiative, and was not Court-ordered.

Some of the Defendants to this case have filed their Motion for Summary Judgment. However, named defendants Gonzales and Colts have not yet been properly identified and served. Additionally, the identity of named defendant “Mrs. B” has only recently been ascertained by the Plaintiff, and a Motion to Amend to properly name this Defendant is pending. It appears many of the arguments contained in the Motion for Summary Judgment would apply to these named Defendants who have not yet been served. **Accordingly, it is the recommendation of the undersigned that Defendants’ First Motion for Summary Judgment be dismissed as premature at this time.** This determination should not in any way preclude the refiling of such motion at the time all of the Defendants have been properly named and served.

In addition, the Defendants note the following substitutions should be made as some Defendants were incorrectly named by Plaintiff: Deputy Rankin should be substituted for Deputy Rakin; Deputy Blagg should be substituted for Deputy Blugg; Deputy Barr should be substituted for Deputy Bar. It is recommended the clerk of court make those substitutions to the docket in this matter.

**The parties have ten days from receipt of the 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 July, 2009.

/s/ J. Marschewski  
HONORABLE JAMES R. MARSCHEWSKI  
UNITED STATES MAGISTRATE JUDGE