

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

DAVID ARTHUR McMANNIS

PLAINTIFF

v.

Civil No. 08-5224

CAPTAIN HUNTER PETRAY,  
Commander of the Jail, Benton County  
Detention Center; and GUARD MONROE,  
Benton County Detention Center

DEFENDANTS

**REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE**

David Arthur McMannis filed this civil rights action pursuant to 42 U.S.C. § 1983. He proceeds *pro se* and *in forma pauperis*.

On June 10, 2009, Defendants filed a motion for summary judgment (Doc. 27). On January 28, 2010, the undersigned entered an order (Doc. 32) directing the Plaintiff to complete, sign and return an attached questionnaire that would serve as his response to the summary judgment motion.

The Plaintiff's response to the questionnaire was to be returned by February 18, 2010.

To date, the Plaintiff has failed to respond to the questionnaire. Plaintiff has not sought an extension of time to respond to the questionnaire. The Court's order and attached questionnaire have not been returned as undeliverable. The order was mailed to the address provided by the Plaintiff. Plaintiff has not informed the court of any change in his address.

I therefore recommend the case be dismissed on the grounds Plaintiff has failed to prosecute this action and comply with the order of the Court. *See* Fed. R. Civ. P. 41(b). **The parties have fourteen (14) 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 25th day of February 2010.

*/s/ Erin L. Setser*

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HON. ERIN L. SETSER  
UNITED STATES MAGISTRATE JUDGE