

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3  
4 KENNETH LAW, )

5 )  
6 Plaintiffs, )

7 vs. )

8 E.K. McDANIEL, *et al.*, )

9 Defendants. )

3:07-CV-0262-ECR-VPC

**REPORT AND RECOMMENDATION  
OF U.S. MAGISTRATE JUDGE**

April 2, 2009

10 This Report and Recommendation is made to the Honorable Edward C. Reed, Jr., United  
11 States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to  
12 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

13 Before the court is defendant William Eleby's motion for summary judgment (#60),  
14 plaintiff's motion requesting defendant Eleby be dismissed from claim (#64), and defendant  
15 Eleby's memorandum in support of plaintiff's motion to dismiss Eleby as a defendant with  
16 prejudice (#66). The court has thoroughly reviewed the record and the motions and recommends  
17 that the District Court enter and order dismissing defendant William Eleby with prejudice.

18 Kenneth Law ("plaintiff"), a *pro se* inmate, is committed to the custody of the Ohio  
19 Department of Rehabilitation and Correction ("ORDC"). Plaintiff was transferred to Ely State  
20 Prison pursuant to an interstate compact agreement because plaintiff was a witness in two trials  
21 stemming from an Ohio prison riot (#1). Defendant William Eleby is Chief of the Bureau of  
22 Classification of the ODRC (#60). In that role, he is responsible for plaintiff's placement. *Id.*

23 On March 3, 2009, defendant Eleby filed a motion for summary judgment (#60). Plaintiff  
24 responded to that motion by filing his own motion requesting that defendant Eleby be dismissed  
25 with prejudice (#64), and defendant Eleby immediately filed a memorandum in support of  
26 plaintiff's motion (#66). The court finds that based upon the foregoing, the parties have  
27 effectively stipulated to the dismissal of this case against defendant Eleby with prejudice.  
28

1 Therefore, the court recommends that the District Court enter and order dismissing this case with  
2 prejudice as to defendant Eleby pursuant to Fed. R. Civ. P. 41(a).

3 The parties are advised:

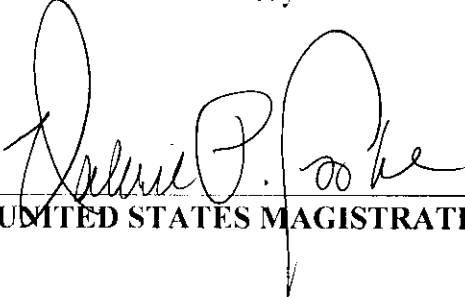
4 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule 1B 3-2 of the Local Rules of Practice,  
5 the parties may file specific written objections to this report and recommendation within ten days  
6 of receipt. These objections should be entitled "Objections to Magistrate Judge's Report and  
7 Recommendation" and should be accompanied by points and authorities for consideration by the  
8 District Court.

9 2. This report and recommendation is not an appealable order and any notice of appeal  
10 pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District Court's  
11 judgment.

12 **RECOMMENDATION**

13 **IT IS THEREFORE RECOMMENDED** that the District Court enter an order  
14 **DISMISSING** this case **with prejudice** as to defendant William Eleby.

15 **DATED:** April 2, 2009.

16  
17   
18 **UNITED STATES MAGISTRATE JUDGE**