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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ROBERT WAYNE NELSON,)
)
 Plaintiff,)
)
 vs.)
)
 CITY OF RENO, NV; RENO POLICE)
 DEPARTMENT, HENRY SOTELO)
 (DEPUTY CITY ATTORNEY), RENO)
 POLICE OFFICER CHAR McMILLIN,)
)
 Defendants.)

3:08-CV-587-LRH (RAM)

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

This Report and Recommendation is made to the Honorable Larry R. Hicks, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR IB 1-4.

On December 15, 2008, the court granted Plaintiff's Motion to Proceed *In Forma Pauperis* and instructed the Clerk to file Plaintiff's Complaint and ordered the Clerk of Court to issue summons to Defendants herein and deliver the same to the U.S. Marshal for service (Doc. #5). Plaintiff was advised by the court that service of process must be effected within one hundred twenty (120) days from that date (Doc. #5).

On July 30, 2009, the court received an unexecuted USM-285 form from the U.S. Marshal certifying that service was attempted on Defendant Henry Sotelo (Doc. #26).

Pursuant to the provisions of Fed. R. Civ. P. 4(m) the District Judge should enter an order dismissing Defendant Henry Sotelo without prejudice for failure to effect timely service on this Defendant.

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RECOMMENDATION

IT IS HEREBY RECOMMENDED that the District Judge enter an Order **DISMISSING** Defendant Henry Sotelo without prejudice for failure to effect timely service on this Defendant.

The parties should be aware of the following:

1. That they may file, pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of Practice, specific written objections to this Report and Recommendation within ten (10) days of receipt. These objections should be titled "Objections to Magistrate Judge's Report and Recommendation" and should be accompanied by points and authorities for consideration by the District Court.
2. That this Report and Recommendation is not an appealable order and that any notice of appeal pursuant to Rule 4(a)(1), Fed. R. Civ. P., should not be filed until entry of the District Court's judgment.

DATED: August 4, 2009.



UNITED STATES MAGISTRATE JUDGE