

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**JEFFERY J. DAVIS,** )  
 )  
 **Plaintiff,** )  
 )  
 )  
 )  
 **vs.** )  
 )  
 )  
 )  
 **MICHAEL J. ASTRUE, Commissioner,** )  
 **Social Security Administration,** )  
 )  
 **Defendant.** )

**CASE NO. 3:08-0333  
JUDGE KNOWLES**

**REPORT AND RECOMMENDATION**

On October 1, 2008, Defendant filed a “Motion For Order To Show Cause Why This Complaint Should Not Be Dismissed, Pursuant to Rule 41(b), Federal Rules of Civil Procedure.” Docket No. 8. As grounds for that Motion, Defendant stated that the Court had previously entered an Order (Docket No. 7), directing Plaintiff to file a Motion for Judgment on the Administrative Record on or before July 18, 2008. Defendant pointed out that, as of October 1, 2008, Plaintiff had not filed his Motion for Judgment.

On October 3, 2008, the undersigned entered an Order granting Defendant’s Motion. That Order stated in part, “On or before October 20, 2008, Plaintiff shall file a Response to the instant Order, showing cause why this action should not be dismissed for failure to prosecute pursuant to Fed. R. Civ. P. 41(b). Docket No. 9. On October 17, 2008, Plaintiff’s counsel filed a Response to the Court’s October 3 Order. Docket No. 10. That Response states in full as follows:

Plaintiff respectfully responds to this Court’s Order instructing him to explain his failure to prosecute his claim. Plaintiff may only

apologize to this Court for his failure to prosecute his claim, which has been delayed by inefficiencies in attorney/client communications.

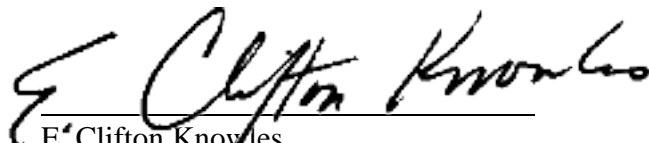
Accordingly, Plaintiff must ask for this Court's forbearance in this matter, and he must also request a 20-day continuance from today, or until November 7, 2008, to file his dispositive motion and memorandum in this matter.

Docket No. 10.

As of the date of the entry of the instant Order, Plaintiff still has not filed his Motion for Judgment on the Administrative Record.

For the foregoing reasons, the undersigned recommends that this action be DISMISSED WITHOUT PREJUDICE pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute and failure to comply with the Court's previous Order.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has ten (10) days after service of this Report and Recommendation in which to file any written objections to this Recommendation with the District Court. Any party opposing said objections shall have ten (10) days after service of any objections filed to this Report in which to file any response to said objections. Failure to file specific objections within ten (10) days of service of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *See Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L. Ed. 2d 435 (1985), *reh'g denied*, 474 U.S. 1111 (1986); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72.

  
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E. Clifton Knowles  
United States Magistrate Judge