

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
BATESVILLE DIVISION**

DETINA EATON  
ADC #707841

PLAINTIFF

V.

NO: 1:08CV00030 JLH/HDY

INMAN

DEFENDANT

**PROPOSED FINDINGS AND RECOMMENDATIONS**

**INSTRUCTIONS**

The following recommended disposition has been sent to United States District Judge J. Leon Holmes. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than eleven (11) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.

3. The detail of any testimony desired to be introduced at the hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court  
Eastern District of Arkansas  
600 West Capitol Avenue, Suite A149  
Little Rock, AR 72201-3325

#### **DISPOSITION**

Plaintiff, an inmate at the McPherson Unit of the Arkansas Department of Correction, filed a *pro se* complaint (docket entry #2), pursuant to 42 U.S.C. § 1983, and service was ordered. On June 23, 2008, the summons was returned unexecuted as to Defendant, after it was attempted in the care of the Arkansas Department of Correction (docket entry #6).<sup>1</sup> Defendant’s last known address was provided, and, on October 20, 2008, the Court entered an order directing that service be attempted at Defendant’s last known address (docket entry #9). On November 17, 2008, the summons was again returned unexecuted (docket entry #11). On November 19, 2008, the Court entered an order directing Plaintiff to provide an address at which Defendant could be served (docket entry #12). Plaintiff was warned that her failure to provide such an address, within 30 days, would result in the recommended dismissal of her complaint. More than 30 days has passed, and Plaintiff

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<sup>1</sup>A note with the return indicated that Defendant was no longer employed at the Arkansas Department of Correction.

has not provided an address for Defendant, or otherwise responded to the order. Under these circumstances, the Court concludes that Plaintiff's complaint should be dismissed without prejudice for failure to comply with Local Rule 5.5(c)(2). *See Miller v. Benson*, 51 F.3d 166, 168 (8th Cir. 1995) (district courts have inherent power to dismiss *sua sponte* a case for failure to prosecute, and exercise of that power is reviewed for abuse of discretion).

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff's complaint (docket entry #2) be DISMISSED WITHOUT PREJUDICE for failure to comply with Local Rule 5.5(c)(2).
2. The Court certify that an *in forma pauperis* appeal taken from the order and judgment dismissing this action be considered frivolous and not in good faith.

DATED this 29 day of December, 2008.



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UNITED STATES MAGISTRATE JUDGE