

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

VICTORIA DIANE GARRETT  
ADC #708139

PLAINTIFF

V.

NO: 1:09CV00031 JMM/HDY

LINDA DIXON *et al.*

DEFENDANTS

**PROPOSED FINDINGS AND RECOMMENDATIONS**

**INSTRUCTIONS**

The following recommended disposition has been sent to United States District Judge James M. Moody. 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 filed this complaint, pursuant to 42 U.S.C. § 1983, on June 29, 2009. Plaintiff did not pay the \$350.00 filing fee, and her applications for leave to proceed *in forma pauperis* were incomplete, in that she failed to provide an account calculation sheet and certificate signed by an authorized official.<sup>1</sup> Accordingly, on July 10, 2009, Plaintiff’s applications for leave to proceed *in forma pauperis* were denied, and she was directed to provide a signed account calculation sheet and certificate within 30 days. At that time, Plaintiff was provided with this district’s account calculation and certificate forms. More than 30 days passed, and Plaintiff did not provide signed copies of the forms, or otherwise respond to the order. On August 13, 2009, the Court entered another order, granting Plaintiff an additional 11 days in which to provide the information (docket entry #6). Plaintiff was specifically warned that her failure to do so would be construed as her wish to discontinue prosecution of this case, and would result in the recommended dismissal of her

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<sup>1</sup>Plaintiff did provide a certificate as part of what appears to be a state *in forma pauperis* application for, but no calculation sheet.

complaint. More than 11 days has passed, and Plaintiff has not responded. 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), and for her failure to respond to the Court's order. *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 be DISMISSED WITHOUT PREJUDICE for failure to comply with Local Rule 5.5(c)(2), and for failure to respond to the Court's order.
2. The Court certify that an *in forma pauperis* appeal taken from the order and judgment dismissing this action is considered frivolous and not in good faith.

DATED this 28 day of August, 2009.



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UNITED STATES MAGISTRATE JUDGE