

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

TYRONE LOCKE
ADC #127715

PLAINTIFF

V.

NO: 2:09CV00105 JLH/HDY

JOSEPH E. HUGHES *et al.*

DEFENDANTS

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 filed this *pro se* complaint (docket entry #2), pursuant to 42 U.S.C. § 1983, on August 4, 2009. On August 6, 2009, Plaintiff was granted leave to proceed *in forma pauperis* (docket entry #4). That order also advised Plaintiff of his responsibility to comply with the Court’s Local Rules, including 5.5(c)(2), which requires *pro se* plaintiffs to “promptly notify the Clerk and the other parties to the proceedings of any change in his or her address, and to monitor the progress of the case, and to prosecute or defend the action diligently.”

Defendants Joseph E. Hughes and Correctional Medical Services, Inc., filed a motion to dismiss and brief in support on August 20, 2009 (docket entries #9 & #10). When Plaintiff failed to respond, the Court entered an order directing him to file his response within 11 days (docket entry #20). That order was mailed to Plaintiff at his address of record, but was returned as undeliverable (docket entry #26). A notation on the returned envelope indicates that Plaintiff has been paroled. Thus, Plaintiff has failed to comply with Local Rule 5.5(c)(2), in that he has failed to promptly notify the Clerk of his change of address, and he has also failed to diligently prosecute this action. 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 failure to prosecute. *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 prosecute.
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.
3. All pending motions be DENIED AS MOOT.

DATED this 18 day of September, 2009.



UNITED STATES MAGISTRATE JUDGE