

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

JOE CRAIG JONES
ADC #116430

PLAINTIFF

V.

4:07CV00263 JMM/HDY

PULASKI COUNTY REGIONAL
DETENTION FACILITY

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 *pro se* complaint, pursuant to 42 U.S.C. § 1983, on March 22, 2007, alleging that he was denied prescribed medication when he was recovering from a gunshot wound while he was being held at the Pulaski County Regional Detention Facility. On November 18, 2008, the Court entered an order scheduling an evidentiary hearing for March 16, 2009 (docket entry #26). That order directed Plaintiff to submit a proposed witness list, including Plaintiff himself, if he intended to testify, no later than December 18, 2008, and warned Plaintiff that his failure to respond to the order could result in the dismissal of his lawsuit.

Plaintiff did not file his witness list, or otherwise respond to the order, by December 18, 2008. Additionally, the scheduling order itself was returned as undeliverable on December 15, 2008, with a notation indicating that Plaintiff had been paroled (docket entry #28).¹ Under these

¹Plaintiff’s address of record is at the Arkansas Department of Correction’s East Arkansas Regional Unit.

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 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 is considered frivolous and not in good faith.

DATED this 19 day of December, 2008.



UNITED STATES MAGISTRATE JUDGE