

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

JOSHUA ALLEN STRICKLIN
ADC #138119

PLAINTIFF

V.

NO: 4:08CV00436 HDY

PHIL MASK *et al.*

DEFENDANTS

ORDER

On November 18, 2009, the Court entered an order scheduling this matter for a bench trial on March 30, 2009 (docket entry #16). That same order directed Plaintiff to submit a list of proposed witnesses, including himself, if he intended to testify, no later than December 18, 2008. The order also warned Plaintiff that his failure to respond by December 18, 2008, could result in the dismissal of his lawsuit for failure to prosecute. To date, Plaintiff has not filed his witness list, 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 ORDERED THAT:

1. Plaintiff's complaint is DISMISSED WITHOUT PREJUDICE for failure to comply with Local Rule 5.5(c)(2).
2. The Court certifies 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 are DENIED AS MOOT.

DATED this 13 day of January, 2009.



UNITED STATES MAGISTRATE JUDGE