

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

LARRY LEROY STALEY
#1139-09

JAMOCA TAIYE PRICE
ADC #105793

PLAINTIFFS

V.

NO: 4:09CV00386 JMM/HDY

RANDY MORGAN *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

Plaintiffs Larry Leroy Staley and Jamoca Taiye Price, currently held at the Pulaski County Regional Detention Facility, filed a *pro se* complaint (docket entry #3), pursuant to 42 U.S.C. § 1983, on May 22, 2009, along with incomplete applications for leave to proceed *in forma pauperis* (docket entries #1 & #2).¹ Accordingly, on May 28, 2009, Plaintiffs were ordered to pay the full filing fee or to file properly completed applications for leave to proceed *in forma pauperis* (docket entry #4). Each Plaintiff was also ordered to file an amended complaint to clarify their claims. The order warned Plaintiffs that their failure to comply would result in the recommended dismissal of their claims.

More than 30 days has passed, and Plaintiffs have not paid the filing fee, filed new IFP

¹Plaintiffs’ applications did not contain a certificate or calculation sheet signed by an authorized official.

applications, filed amended complaints, or otherwise responded to the order. Under these circumstances, the Court concludes that Plaintiffs' complaint should 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. *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. Plaintiffs' 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 8 day of July, 2009.



UNITED STATES MAGISTRATE JUDGE