

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

**NEIL D. SWEIGART**

**PLAINTIFF**

**V.**

**No. 4:09CV00501-JLH-BD**

**CARL JOHNSON, *et al.***

**DEFENDANTS**

**RECOMMENDED DISPOSITION**

**I. Procedure for Filing Objections:**

The following Recommended Disposition has been sent to Chief 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 you receive the recommendation. A 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.

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

## II. Background:

On July 15, 2009, Plaintiff filed this lawsuit pro se under 42 U.S.C. § 1983 (docket entry #2). Plaintiff also submitted a motion to proceed *in forma pauperis* (#1). The motion was denied by Order of August 10, 2009 (#5) because Plaintiff's application was incomplete in that it did not include a signed affidavit with a description of Plaintiff's personal assets and possible sources of income, as required by 28 U.S.C. § 1815(a). Plaintiff was directed to submit a new request to proceed *in forma pauperis* or pay the \$350.00 statutory filing fee within 30 days of entry of that Order (#5). Plaintiff was further directed to file an Amended Complaint specifically describing the constitutional violation he allegedly suffered and the unconstitutional conduct of each named Defendant.

Plaintiff filed notice of change-of-address (#7) on September 14, 2009, informing the Court that he had been released from the custody of the Pulaski County Detention Facility. Because it was unclear whether Plaintiff had received the Court's Order of August 10, 2009, a second copy of the Order was mailed to Plaintiff at his new address on September 28, 2009, along with an Application to Proceed *In Forma Pauperis*. Plaintiff was directed to comply with the Court's August 10, 2009, Order on or before October 28, 2009 (#8). Plaintiff was instructed that failure to comply with the Order could result in dismissal of this action under Local Rule 5.5(c)(2) and the Federal Rules of Civil Procedure.

Plaintiff has failed either to file an Amended Complaint or to submit a complete application to proceed *in forma pauperis*, and the time allowed for doing so has passed.

**III. Conclusion:**

The Court recommends that the District Court dismiss Plaintiff's Complaint without prejudice, under Local Rule 5.5(c)(2) and the Federal Rules of Civil Procedure, for failure to comply with the Court's Orders of August 10, 2009 (#5) and September 28, 2009 (#8).

DATED this 9th day of November, 2009.



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UNITED STATES MAGISTRATE JUDGE