

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

**BILLY WYNNE
ADC # 601431**

PLAINTIFF

V.

CASE NO. 4:09CV00827 BSM/BD

NURSE LUMKINS, *et al.*

DEFENDANTS

RECOMMENDED DISPOSITION

I. Procedures for Filing Objections

The following recommended disposition has been sent to United States District Judge Brian S. Miller. 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 fourteen (14) days from receipt of the recommendations. 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 October 27, 2009, Plaintiff filed this lawsuit pro se under 42 U.S.C. § 1983 (docket entry #1). Although Plaintiff filed a motion for restraining order (#2), he failed to submit either a proper application to proceed *in forma pauperis* or pay the statutory filing fee. Accordingly, on October 30, 2009, Plaintiff was directed to file an application or pay the filing fee of \$350.00 within thirty days (#3). The application to proceed *in forma pauperis* or payment of the filing fee was due on or before November 29, 2009.

The time allowed has now passed, and Plaintiff has failed to submit an application to proceed *in forma pauperis* or pay the \$350.00 filing fee to initiate this action. Plaintiff was notified that failure to timely comply with the Court's order could result in dismissal of his case (#3).

III. Conclusion:

The Court recommends that the District Court dismiss Plaintiff's Complaint without prejudice, under Local Rule 5.5(c)(2), for failure to comply with the Court's Order of October 30, 2009 (#3). In addition, the Court recommends that Plaintiff's motion for restraining order be DENIED (#2) as moot.

DATED this 1st day of December, 2009.


UNITED STATES MAGISTRATE JUDGE