

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

JOHNNY LEE NICHOLS

PETITIONER

No. 4:25-cv-00084 KGB/PSH

**STATE OF ARKANSAS,
POPE COUNTY CIRCUIT COURT**

RESPONDENT

PROPOSED FINDINGS AND RECOMMENDATION

INSTRUCTIONS

The following Recommendation has been sent to Chief United States District Judge Kristine G. Baker. You may file written objections to all or part of this Recommendation. If you do so, those objections must: (1) specifically explain the factual and/or legal basis for your objection; and (2) be received by the Clerk of this Court within fourteen (14) days of this Recommendation. By not objecting, you may waive the right to appeal questions of fact.

DISPOSITION

Petitioner Johnny Lee Nichols (“Nichols”), an inmate at the Pope County Detention Center, filed a petition for writ of habeas corpus on January 30, 2025. The

Court subsequently ordered Nichols to submit either the \$5 filing fee or a properly completed *in forma pauperis* application on or before March 5, 2025. Doc. No. 3. Citing Local Rule 5.5, the Court informed Nichols that failure to comply with the Court's directions would result in the recommended dismissal of the case without prejudice. The Court also advised Nichols of his obligation to promptly notify the Clerk of any change in his address. *Id.*

Nichols has not responded to the Court's Order. Additionally, that Order, as well as other mail sent to Nichols by the Clerk, was returned as undeliverable with a notation that Nichols was no longer at the Pope County Detention Center. *See* Doc. Nos. 6-10. Nichols has not informed the Court of his new address. Under these circumstances, the Court concludes that Nichols' petition should be dismissed without prejudice for failure to comply with Local Rule 5.5(c)(2) and 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).

Therefore, the Court recommends that Nichols' petition for writ of habeas corpus be dismissed without prejudice for failure to comply with Local Rule 5.5(c)(2) and failure to respond to the Court's Order.

Pursuant to 28 U.S.C. § 2253 and Rule 11 of the Rules Governing Section

2554 Cases in the United States District Court, the Court must determine whether to issue a certificate of appealability in the final order. In § 2254 cases, a certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(1)-(2). The Court finds no issue on which petitioner has made a substantial showing of a denial of a constitutional right. Thus, the Court recommends the certificate of appealability be denied.

IT IS SO ORDERED this 7th day of March, 2025.



UNITED STATES MAGISTRATE JUDGE