

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION**

ALFONSO COBB  
ADC #110170

PLAINTIFF

V.

5:08CV00251 SWW/JTR

DR. RUDY TURNER

DEFENDANT

**PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

**INSTRUCTIONS**

The following recommended disposition has been sent to United States District Judge Susan Webber Wright. 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 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 United States District Judge, you must, at the same time that you file your written objections, include a "Statement of Necessity" that sets forth the following:

1. Why the record made before the Magistrate Judge is inadequate.

2. Why the evidence to be proffered at the requested hearing before the United States District Judge was not offered at the hearing before the Magistrate Judge.
3. An offer of proof setting forth the details of any testimony or other evidence (including copies of any documents) desired to be introduced at the requested hearing before the United States District Judge.

From this submission, the United States 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

### **I. Discussion**

On September 4, 2008, Plaintiff commenced this § 1983 action alleging that Defendant Dr. Rudy Turner, who is a private physician, failed to provide him with adequate medical care while he was confined in the Drew County Detention Facility.<sup>1</sup> See docket entries #2 and #8. On October 16, 2008, the Court issued an Order giving Plaintiff ninety days to provide a valid service address for Defendant Turner. See docket entry #10. Importantly, the Court advised Plaintiff that the failure to timely and properly do so would result in the dismissal of this case, without prejudice, pursuant to Fed. R. Civ. P. 4(m). See *Lee v. Armontrout*, 991 F.2d 487, 489 (8th Cir. 1993) (holding that it is the responsibility of a prisoner proceeding *pro se* and *in forma pauperis* in a § 1983 action to provide the Court and the U.S. Marshals with proper service addresses for each of the defendants);

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<sup>1</sup>Plaintiff is currently incarcerated in the Arkansas Department of Correction. See docket entry #12.

Fed. R. Civ. P. 4(m) (providing that a Court may *sua sponte* dismiss a defendant if he or she is not served within 120 days of the filing of the complaint). As of the date of this Recommended Disposition, Plaintiff has failed to provide a service address for the only Defendant in this action, and the time for doing so has expired.

## II. Conclusion

IT IS THEREFORE RECOMMENDED THAT:

1. Pursuant to Fed. R. Civ. P. 4(m), this case be DISMISSED, WITHOUT PREJUDICE, due to Plaintiff's failure to provide a valid service address for the only Defendant in this action.

2. The Court CERTIFY, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from this Order would not be taken in good faith.

Dated this 21<sup>st</sup> day of January, 2009.

  
UNITED STATES MAGISTRATE JUDGE