

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

**KENNETH RAY PITTS
ADC# 85938**

PLAINTIFF

VS.

CASE NO.: 5:08CV00262-JLH-BD

JOYCE L. MARSHALL, *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 receipt of the findings and 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.

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. The details 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 need for an 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 A-149
Little Rock, AR 72201-3325

II. Background:

Plaintiff, Kenneth Ray Pitts, an inmate confined in the Cummins Unit of the Arkansas Department of Correction, filed this action on September 22, 2008, under 42 U.S.C. § 1983, alleging violations of his civil and constitutional rights (docket entry #2). On September 24, 2008, Plaintiff’s Motion for Leave to Proceed *in Forma Pauperis* (#1) was denied under 28 U.S.C. § 1915(g) because he had three prior “strikes” and he failed to pay the required filing fee (#4). Plaintiff was ordered to pay the \$350.00 statutory filing fee on or before October 24, 2008, in order to proceed with this lawsuit. Plaintiff was warned that failure to comply with the Order would result in dismissal of his lawsuit without prejudice. Plaintiff has failed to comply with the Order (#4) and the time for doing so has passed.

III. Conclusion:

Accordingly, the Court recommends that Plaintiff's Complaint be DISMISSED WITHOUT PREJUDICE.

DATED this 6th day of November, 2008.



UNITED STATES MAGISTRATE JUDGE