

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

JAMES ALFORD WHITE, JR.

PLAINTIFF

V.

NO: 5:09CV00071 JLH/HDY

TIM BUNCH *et al.*

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to 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 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 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. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The detail 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 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

DISPOSITION

On March 6, 2009, Plaintiff filed a *pro se* complaint, pursuant to 42 U.S.C. § 1983, along with a motion for leave to proceed *in forma pauperis* (“IFP”). However, before the IFP motion could be decided, Plaintiff filed a notice of change of address, which indicated that he was no longer incarcerated (docket entry #4). Accordingly, on April 6, 2009, the undersigned entered an order denying Plaintiff’s IFP application, and directing Plaintiff to resubmit his application for leave to proceed IFP (docket entry #6). Plaintiff was directed to submit the new application within 30 days, and was notified that his failure to do so would result in the recommended dismissal of his complaint.

More than 30 days has passed, and Plaintiff has not paid the filing fee, filed a new IFP application, or otherwise responded to the order. Under these circumstances, the Court concludes that Plaintiff’s complaint should be dismissed without prejudice for failure to comply with Local Rule 5.5(c)(2), and for 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).

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff's complaint be DISMISSED WITHOUT PREJUDICE for failure to comply with Local Rule 5.5(c)(2), and for failure to respond to the Court's order.

2. The Court certify that an *in forma pauperis* appeal taken from the order and judgment dismissing this action is considered frivolous and not in good faith.

DATED this 11 day of May, 2009.



UNITED STATES MAGISTRATE JUDGE