

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

MOSES GOINS

PLAINTIFF

V.

NO: 5:09CV00132 SWW/HDY

ROYAL

DEFENDANT

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge Susan W. 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 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

Plaintiff filed this complaint, pursuant to 42 U.S.C. § 1983, on May 11, 2009. Plaintiff did not pay the \$350.00 filing fee, and his application for leave to proceed *in forma pauperis* (“IFP”) was incomplete, in that the calculation sheet and certificate were not signed by an authorized official. Therefore, on May 12, 2009, the Court entered an order denying Plaintiff’s IFP application, and granting him 30 days in which to file a signed calculation sheet and certificate (docket entry #3). On May 21, 2009, Plaintiff filed another IFP application (docket entry #6), but the calculation sheet and certificate were again unsigned. Accordingly, that application was denied, and Plaintiff was given an additional 30 days in which to pay the filing fee, or to provide a signed certificate and calculation sheet (docket entry #7). Plaintiff was also warned that his failure to comply would lead to the recommended dismissal of his complaint.

More than 30 days has passed, and Plaintiff has not paid the filing fee, provided a signed calculation sheet and certificate, 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 30 day of June, 2009.



UNITED STATES MAGISTRATE JUDGE