

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

HERMAN D. BROWN, SR.

PLAINTIFF

V.

NO: 5:09CV00195 JLH/HDY

REYNOLDS

DEFENDANT

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

Plaintiff filed this complaint, pursuant to 42 U.S.C. § 1983, on July 9, 2009. Plaintiff did not pay the \$350.00 filing fee or file an application for leave to proceed *in forma pauperis* (“IFP”). Plaintiff was therefore ordered to pay the fee or file the application. Plaintiff filed an incomplete IFP application on July 15, 2009, and was granted an additional 30 days in which to file a completed application. On July 27, 2009, Plaintiff filed another incomplete application, and, on August 3, 2009, the Court entered an order directing Plaintiff to file a completed application (docket entry #9). That order warned Plaintiff that his failure to do so within 30 days would result in the recommended dismissal of his complaint. More than 30 days has passed, and Plaintiff has not submitted a completed IFP application, paid the \$350.00 filing fee, or responded in any manner to the Court’s August 3, 2009, 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 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 *informa pauperis* appeal taken from the order and judgment dismissing this action is considered frivolous and not in good faith.

DATED this 8 day of October, 2009.



UNITED STATES MAGISTRATE JUDGE