

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

KINGRALE COLLINS
ADC #SK945

PLAINTIFFS

BRANDON LACY
ADC #SK973

V.

NO: 5:09CV00340 JMM/HDY

LARRY NORRIS

DEFENDANT

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge James M. Moody. 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 fourteen (14) 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

Plaintiffs Kingrale Collins and Brandon Lacy filed this complaint, pursuant to 42 U.S.C. § 1983, on November 2, 2009. Neither Plaintiff paid the filing fee, and only Collins filed an application for leave to proceed *in forma pauperis* (“IFP”) (docket entry #2). Collins’s application indicated that he had sufficient assets to pay the filing fee. Accordingly, on November 5, 2009, the Court denied Collins’s IFP application, and directed him to pay the \$350.00 filing fee within 30 days (docket entry #5). That same order directed Lacy to pay the filing fee, or file an application for leave to proceed IFP within 30 days.

More than 30 days has passed, and Collins has not paid the filing fee, or otherwise responded to the order. Under these circumstances, the Court concludes that Collins’s complaint should be dismissed without prejudice for failure to pay the filing fee, 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).

Lacy has not paid the filing fee, or filed an IFP application, but has filed a motion to be dismissed as a party, in which he asserts that he was never part of this lawsuit (docket entry #5). For good cause shown, Lacy's motion should be granted.

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff Brandon Lacy's motion to be dismissed as a party (docket entry #5) be GRANTED, Lacy's claims be DISMISSED WITHOUT PREJUDICE, and Lacy's name be removed as a party Plaintiff.

2. Plaintiff Kingrale Collins's complaint be DISMISSED WITHOUT PREJUDICE for failure to pay the \$350.00 filing fee, failure to comply with Local Rule 5.5(c)(2), and failure to respond to the Court's order.

3. 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 9 day of December, 2009.


UNITED STATES MAGISTRATE JUDGE