

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

**CURTIS WIMBUSH, JR.,**

**Plaintiff,**

**vs.**

**Case No. 4:08cv429-SPM/WCS**

**ROBERT MIXSON,  
QUINCY POLICE DEPARTMENT,**

**Defendants.**

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**REPORT AND RECOMMENDATION**

This cause is before me upon referral from the Clerk. In an order filed December 18, 2009, Plaintiff was directed to file a third amended complaint by January 23, 2009. Plaintiff was specifically warned that a recommendation would be made that this case be dismissed if there was a failure to timely comply with that order. Doc. 10.<sup>1</sup> To date, no response has been received from the Plaintiff.

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<sup>1</sup> This is the second report and recommendation entered due to Plaintiff's failure to timely file an amended complaint. The first report and recommendation (doc. 8) was vacated when Plaintiff filed his second amended complaint, one month beyond the November 7, 2008 deadline. Doc. 9.

A trial court has inherent power to dismiss a case sua sponte for failure to prosecute. Link v. Wabash R.R., 370 U.S. 626, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962). Fed. R. Civ. P. 41(b) authorizes a district court to dismiss an action for failure to obey a court order. Moon v. Newsome, 863 F.2d 835, 838 and cases cited (11th Cir.), *cert. denied*, 493 U.S. 863 (1989). Since Plaintiff has failed to comply with an order or to prosecute this case, this complaint should now be dismissed without prejudice.

Plaintiff shall have a 15 day period after service of this report and recommendation in which to file objections. This will also afford Plaintiff a final opportunity to show good cause for this failure to respond. Plaintiff may do so by filing a motion for reconsideration which will be referred to me by the Clerk.

It is therefore, respectfully **RECOMMENDED** that this case be **DISMISSED** without prejudice.

**IN CHAMBERS** at Tallahassee, Florida, on February 10, 2009.

s/ William C. Sherrill, Jr.  
**WILLIAM C. SHERRILL, JR.**  
**UNITED STATES MAGISTRATE JUDGE**

**NOTICE TO PARTIES**

**Within 15 days after being served with a copy of this report and recommendation, a party may serve and file specific, written objections to the proposed findings and recommendations. A party may respond to another party's objections within 10 days after being served with a copy thereof. Failure to file specific objections limits the scope of review of proposed factual findings and recommendations.**