

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

JONATHAN THOMAS SCHMIDT,

Plaintiff,

vs.

Case No. 4:09cv514-MP/WCS

WARDEN, MILTON HICKS, et al.,

Defendants.

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REPORT AND RECOMMENDATION

This cause is before me upon referral from the Clerk. In an order filed January 5, 2010, Plaintiff was directed to file an amended complaint by February 5, 2010. Plaintiff was specifically warned that a recommendation would be made that this case be dismissed if there was a failure to comply with that order. Doc. 5. To date, no response has been received from the Plaintiff.

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 and the pending motion for leave to proceed *in forma pauperis*, doc. 2, be **DENIED as moot**.

IN CHAMBERS at Tallahassee, Florida, on February 17, 2010.

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

NOTICE TO THE PARTIES

A party may file specific, written objections to the proposed findings and recommendations within 14 days after being served with a copy of this report and recommendation. A party may respond to another party's objections within 14 days after being served with a copy thereof. Failure to file specific objections limits the scope of review of proposed factual findings and recommendations.