

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

MICHAEL ERIC HORNES,

Plaintiff,

v.

**Civil Action No. 1:04CV261
(Judge Broadwater)**

**KEVIN WENDT, d/b/a Warden;
M. ARNOLD, d/b/a Captain;
D. BROWN, d/b/a I.S.M.;
A. TEMPLES, d/b/a S.O.E.;
YEAGER, d/b/a Tech;
M. VELTRI, d/b/a Unite Man;
D. JONES, d/b/a Case Man;
J. OSTEEN, d/b/a Case Man;
R. REED, d/b/a Counselor;
J. MULLER, d/b/a Officer;
UNKNOWN MAILROOM STAFF;
T. PAGE, d/b/a Officer;
UNKNOWN OFFICERS,
DEEDs, d/b/a Counselor;
M. WHINNERY, d/b/a Officer;
ALL KNOWN S.H.U. OFFICERS; and
CREEGAN, d/b/a Officer, et. al.,**

Defendants.

**REPORT AND RECOMMENDATION
THAT APPLICATION TO PROCEED
WITHOUT PREPAYMENT OF FEES BE DENIED**

On December 22, 2004, the *pro se* plaintiff, Michael Hornes, filed a complaint with the Court. On January 6, 2005, he filed an Application to Proceed Without Prepayment of Fees along with a certified copy of his trust fund account statement, a ledger sheet for the prior six months, and a consent to collection of fees from trust account.

The ledger sheet reveals that the plaintiff had an account balance of \$796.97 as of January 4, 2005. Consequently, the plaintiff has sufficient funds to pay the \$250.00 filing fee. Accordingly, the plaintiff's request to proceed without prepayment of fees should be denied, and the plaintiff should be ordered to pay the full filing fee. The plaintiff should also be warned that the failure to pay the full filing fee within the time allowed by the Court will result in the dismissal of his complaint.

The plaintiff may file, within ten (10) days after being served with a copy of this Recommendation, with the Clerk of the Court, written objections identifying the portions of the Recommendation to which objections are made, and the basis for such objections. A copy of such objections should also be submitted to the Honorable W. Craig Broadwater, United States District Judge. Failure to timely file objections to the Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

The Clerk of the Court is directed to mail a copy of this Report and Recommendation to the pro se plaintiff.

DATED: May 4, 2005

/s *John S. Kaull*
JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE