

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

RONALD L. JOHNSON,

Plaintiff,

v.

**Case No. 3:06-cv-3
(Judge Broadwater)**

**POTOMAC HIGHLANDS REGIONAL
JAIL and SGT. JAMES ELZA,**

Defendants.

**REPORT AND RECOMMENDATION THAT PLAINTIFF'S CASE BE DISMISSED FOR
THE FAILURE TO FILE THE NECESSARY FORMS OR PAY THE FULL FILING FEE**

On May 23, 2005, *pro se* plaintiff initiated this case by filing a civil rights complaint under 42 U.S.C. § 1983 and an Application to Proceed Without the Prepayment of Fees in the United States District Court for the Southern District of West Virginia. Because plaintiff challenges the conditions of his confinement at the Potomac Highlands Regional Jail, the case was transferred to this Court on December 30, 2005.

Upon receipt by this Court, it was discovered that plaintiff had failed to accompany his Application to Proceed Without Prepayment of Fees with a copy of his Prisoner Trust Account Statement and a Consent to a Collection of Fees form. Because the Court cannot determine plaintiff's eligibility to proceed without the prepayment of fees without his prisoner account statement, a deficiency notice was sent to plaintiff on January 26, 2006. In the notice, plaintiff was advised to file the missing forms within thirty (30) days from the date of the Order. Plaintiff was also notified that the failure to comply would result in the dismissal of his case.

On March 16, 2006, a subsequent review of the file showed that plaintiff had not filed the forms. Therefore, a second order was issued on March 16, 2006. That Order gave plaintiff until April 16, 2006 to file the forms and advised plaintiff that the failure to comply would result in a

recommendation that his case be dismissed.

On May 3, 2006, the Court recommended that this case be dismissed without prejudice because plaintiff had failed to submit the necessary forms.

On May 11, 2006, plaintiff filed another Application to Proceed Without the Prepayment of Fees (Doc. 13), his prisoner trust account report and ledger sheets from his prisoner trust account (Doc. 14).

On June 2, 2006, the Honorable W. Craig Broadwater referred Document Nos. 13 and 14 to the undersigned for consideration.

A review of the file shows that, as of the date of this opinion, plaintiff has failed to submit a Consent to a Collection of Fees form. Accordingly, it is recommended that, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, this case be DISMISSED without prejudice for the failure to prosecute.

Within ten (10) days after being served with a copy of this recommendation, any party may file with the Clerk of Court written objections identifying those portions of the recommendation to which objection is made and the basis for such objections. A copy of any objections should also be submitted to the Honorable W. Craig Broadwater, United States District Judge for the Northern District of West Virginia. Failure to timely file objections to this recommendation 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.), 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 is directed to mail a copy of this Report and Recommendation to the *pro se* plaintiff and any counsel of record.

Dated: June 7, 2006.

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE