

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

JOHN ERCELL STATON,

Plaintiff,

v. // CIVIL ACTION NO. 1:06cv3
(Judge Keeley)

JOE MANCHIN, III, Governor,
JAMES W. SPEARS, Cabinet Secretary,
WYETTA FREDERICKS, Executive Director,
and the POTOMAC HIGHLANDS REGIONAL JAIL,

Defendants.

ORDER ADOPTING MAGISTRATE JUDGE'S
OPINION/REPORT AND RECOMMENDATION

The pro se plaintiff John Ercell Staton ("Staton") filed a civil rights complaint under 42 U.S.C. §1983 challenging the conditions of his confinement at the Potomac Highlands Regional Jail. On December 29, 2005, the case was transferred to the Northern District of West Virginia and was referred to United States Magistrate John S. Kaul.

Initial review revealed that the plaintiff failed to file an "Application to Proceed Without the Prepayment of Fees in the United States District Court for the Southern District of West Virginia." On April 28, 2006, Magistrate Kaul issued a deficiency notice to the plaintiff and instructed him to file the missing forms within twenty days and advised that failure to comply would result in dismissal of his case. Plaintiff filed a release for institutional account information, a second motion to proceed as a pauper and a motion for correction of error but did not file the requested forms.

ORDER ADOPTING MAGISTRATE JUDGE'S
OPINION/REPORT AND RECOMMENDATION

On June 29, 2006, Magistrate Judge Kaulf determined that plaintiff had failed to file the appropriate forms and again directed him to file the completed forms within twenty days. The Magistrate again warned that failure to file the forms would result in dismissal of the case.

On September 19, 2006, Magistrate Judge Kaulf issued an Opinion/ Report and Recommendation, recommending that Staton's civil rights complaint be dismissed without prejudice for failure to prosecute unless the Court received the requested forms or a motion to extend time or an explanation for plaintiff's noncompliance with the Court's orders within ten days.

As of the date of this order, plaintiff has not filed any explanation or requested an extension. Consequently, the Court **ADOPTS** the Report and Recommendation in its entirety, **DISMISSES WITHOUT PREJUDICE** Staton's civil rights (docket no. 7) and **ORDERS** the case stricken from its docket.

The Clerk is directed to mail a copy of this Order to the pro se petitioner via certified mail, return receipt requested and to counsel of record.

Dated: October 12, 2006.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE