

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

**JASON BOYLES,**

**Plaintiff,**

**v.**

**Civil Action no. 5:08cv63  
(Judge Stamp)**

**WILLIAM D. HALE,  
WILLIAM M. FOX,**

**Defendants/**

**REPORT AND RECOMMENDATION  
THAT CASE BE DISMISSED WITHOUT PREJUDICE**

On February 20, 2008, the *pro se* plaintiff, Jason Boyles, initiated this case by filing a civil rights complaint pursuant to 42 U.S.C. § 1983. On February 25, 2008, the plaintiff was granted Leave to Proceed *in forma pauperis*. However, as noted in the Order, the plaintiff is still required to pay the entire \$350.00 filing fee in installments. The Order specifically required that the initial partial filing fee of \$ 2.07 be paid within thirty (30) days of entry of the Order and advised the plaintiff that failure to pay the initial filing fee as directed might result in dismissal of his case without prejudice.

The Order was sent by certified mail to St. Mary's Correctional Center, and the return receipt was received by the Clerk's office on February 27, 2008. On April 7, 2008, the undersigned reviewed the file and determined that the initial filing fee had not been paid. Accordingly, an order was filed giving the plaintiff ten (10) days to show cause why his case should not be dismissed. Service of the Order was accepted on April 9, 2008. On April 29, 2008, the plaintiff filed a change of address and a Motion to Amend. On May 2, 2008, the plaintiff filed what appears to be a ledger sheet indicating that as of April 20, 2008, he had a negative balance in his prisoner trust account of \$0.17. The undersigned assumes that this ledger sheet was submitted in response to the show cause order.

At the time the plaintiff was granted leave to proceed *in forma pauperis* and ordered to pay an initial filing fee of \$2.07, the information provided by the plaintiff demonstrated that he had \$5.29 in

his inmate account. Moreover, for the six month preceding the filing of the complaint, the plaintiff had average monthly deposits of \$10.30. Because the plaintiff had provided no information regarding his finances between February 25, 2008, the date he was granted leave to proceed *in forma pauperis* and ordered to pay an initial filing fee of \$2.07, and May 2, 2008, the date he filed a one line ledger sheet, the undersigned finds that he has not shown cause for his failure to pay the initial filing fee as ordered.

### **RECOMMENDATION**

In consideration of the foregoing , it is recommended that the plaintiff's Complaint be **DISMISSED WITHOUT PREJUDICE**. In addition, the undersigned recommends that the plaintiff's Motion to Amend (Doc. 13) be **DENIED AS MOOT**.

Any party may file within ten (10) days of the date 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 Frederick P. Stamp, Jr. 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); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk of Court is directed to mail a copy of this Recommendation to the *pro se* petitioner by certified mail, return receipt requested.

DATED: May 5, 2008

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