

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

**JORGE L. NIEBLA,**

**Plaintiff,**

**vs.**

**Case No. 4:06cv282-RH/WCS**

**MULTI-STATE LITIGATION AND  
INTERGOVERNMENTAL AFFAIRS,**

**Defendant.**

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**REPORT AND RECOMMENDATION**

Plaintiff has submitted a civil rights complaint under 42 U.S.C. § 1983. Doc. 1. Plaintiff, an inmate incarcerated within the custody of the Florida Department of Corrections, has not paid the Court's filing fee. Plaintiff also did not submit a motion seeking leave to proceed *in forma pauperis*, nor would he be entitled to such status in this Court.

Judicial notice is taken of some of Plaintiff's previously filed civil rights cases. Cases 8:01cv914, 8:01cv143, and 8:00cv2306 were all dismissed by the United States District Court for the Middle District of Florida because they failed to state a claim upon which relief could be granted. Further, case 1:99cv85 was dismissed by the United

States District Court for the Southern District of Florida because it, too, failed to state a claim. Plaintiff has, accordingly, had more than three cases dismissed for reasons which count as "strikes" under 28 U.S.C. § 1915(g). Thus, for Plaintiff to proceed in this Court, he must simultaneously pay the \$350.00 filing fee because Plaintiff is not entitled to *in forma pauperis* status.

The instant complaint does not allege that Plaintiff is under imminent danger of serious physical injury and, thus, the allegations do not bring Plaintiff within the "imminent danger" exception to the three "strikes" bar of § 1915(g). Indeed, Plaintiff's claim is that he is being punished by not being allowed to have Playboy magazines. Thus, this civil rights action cannot proceed without payment of the full filing fee and this case should be dismissed. The dismissal should be without prejudice to Plaintiff presenting his allegations in a complaint for which he pays the full \$350.00 filing fee at the time of filing.

In light of the foregoing, it is respectfully **RECOMMENDED** that this action be **DISMISSED** because Plaintiff did not submit the filing fee at the time of case initiation and Plaintiff is not entitled to proceed *in forma pauperis*.<sup>1</sup>

**IN CHAMBERS** at Tallahassee, Florida, on June 15, 2006.

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

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<sup>1</sup> Recently, Plaintiff was denied *in forma pauperis* status in this District. See case 3:06cv160-RV/EMT.

**NOTICE TO THE PARTIES**

**A party may file specific, written objections to the proposed findings and recommendations within 15 days after being served with a copy of this report and recommendation. A party may respond to another party's objections within 10 days after being served with a copy thereof. Failure to file specific objections limits the scope of review of proposed factual findings and recommendations.**