

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

**HARVEY BREWER,**

**Plaintiff,**

**v.**

**Civil Action No. 2:11cv35  
(Judge Bailey)**

**KUMA DEBOO, et al.,**

**Defendants.**

**MEMORANDUM OPINION AND ORDER OF DISMISSAL**

On this day, the above-styled matter came before the Court for consideration of the Petition for Writ of Mandamus [Doc. 1], filed by the *pro se* plaintiff, Harey Brewer. A review of the file shows that plaintiff initiated this case on April 25, 2011. Following a Notice of Deficient Pleading, the plaintiff filed an Application for Leave to Proceed *in forma pauperis*, a Prisoner Trust Account, and a Consent to Collection of Fees from Trust Account.

On May 17, 2011, Magistrate Judge Joel issued a report and Recommendation in which he recommended that the Motion to Proceed without prepayment of fees be denied because the plaintiff had \$1,640.87 in his prisoner trust account. On May 23, 2011, the plaintiff filed objections. On June 29, 2011, the Court entered an Order overruling the objections and ordering the plaintiff to pay the \$350 filing fee within thirty (30) days. The plaintiff was advised that failure to pay the \$350 fee as directed would result in dismissal of this case. The Order was sent to the plaintiff by certified mail, return receipt requested. Service was accepted at FCI Gilmer on June 30, 2011.

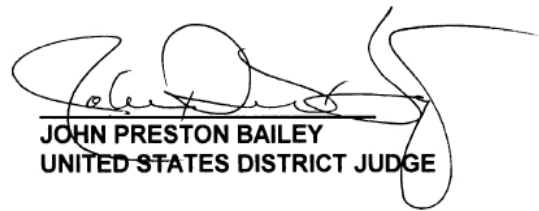
Upon review of the file on this date, the Court finds that the plaintiff has not complied with the Court's Order of June 29, 2011, has not requested an extension of time to do so,

or otherwise explained his reasons for noncompliance. Accordingly, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, it is **ORDERED** that the plaintiff's petition [**Doc. 1**] is hereby **DISMISSED WITHOUT PREJUDICE** for the failure to prosecute. It is further **ORDERED** that this civil action be **DISMISSED** and **STRICKEN** from the active docket of this Court.

**IT IS SO ORDERED.**

The Clerk is **DIRECTED** to transmit a copy of this Order to the plaintiff by certified mail, return receipt requested, to his last known address as reflected on the docket sheet.

**DATED:** August 9, 2011.



**JOHN PRESTON BAILEY**  
**UNITED STATES DISTRICT JUDGE**