

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

HENRY R. MIKELS,

Plaintiff,

v.

**Civil Action No. 5:09CV9
(Judge Stamp)**

D.O.C. HUTTONSVILLE, et al.,,

Defendants.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

On this day, the above-styled matter came before the Court for consideration of the Civil Rights complaint of the plaintiff, Henry R. Mikels. A review of the file shows that plaintiff initiated this case on January 23, 2009. With his complaint, the plaintiff also filed an Application for Leave to Proceed *in forma pauperis*, a Prisoner Trust Account, and a Consent to Collection of Fees from Trust Account. The plaintiff's request to proceed as a pauper was granted on January 26, 2009. However, the plaintiff was ordered to pay an initial filing fee of \$3.58 within thirty (30) days of entry of the date of the order granting him pauper's status. The order was sent to the plaintiff by certified mail, return receipt requested. Service was accepted at Huttonsville Correctional Center on January 27, 2009.

On March 11, 2009, United States Magistrate Judge James E. Seibert conducted a review of the file and determined that the plaintiff had failed to pay the required initial filing fee. Therefore, Magistrate Judge Seibert directed the plaintiff to show cause within ten (10) days, why the complaint should not be dismissed for the failure to prosecute. Magistrate Judge Seibert advised the plaintiff that the failure to show cause would result in dismissal of his case. Again, the order was sent by certified mail, and service was accepted at Huttonsville Correctional Center on March 13, 2009.

Upon review of the file on this date, the Court finds that the plaintiff has not complied with the Court's order of March 11, 2009, 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 complaint [Dckt. 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.

Should the plaintiff choose to appeal the judgment of this Court to the United States Court of Appeals for the Fourth Circuit, he is ADVISED that he must file a notice of appeal with the Clerk of this Court within 30 days after the date of the entry of the judgment order. Upon reviewing the notice of appeal, this Court will either issue a certificate of appealability or state why a certificate should not issue in accordance with Federal Rule of Appellate Procedure 22(b)(1). If this court should deny a certification, the plaintiff may request or circuit judge of the United States Court of Appeals for the Fourth Circuit to issue the certificate.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the plaintiff and any counsel of record herein. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is directed to enter judgment on this matter.

DATED: April 20, 2009

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE