

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

CHARLESTON DIVISION

ARTHUR BALLINGER, IV

Plaintiff,

v.

CIVIL ACTION NO. 2:08-cv-01024

CO II GARRETT ADAMS, et al.,

Defendants.

MEMORANDUM OPINION & ORDER

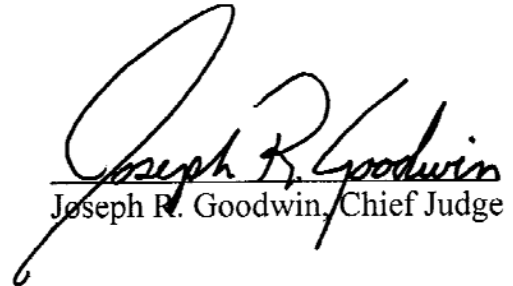
Pending before the court is the defendants' Motion to Dismiss [Docket 13] and the plaintiff's Letter-Form Motion for Discovery [Docket 34]. The Motion to Dismiss was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation ("PF&R") for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that the court deny the defendants' Motion to Dismiss [Docket 30]. The defendants have submitted timely objections to the Magistrate Judge's PF&R [Docket 35].

The court has reviewed *de novo* those portions of the PF&R to which the defendants object. The court **ADOPTS** the Magistrate Judge's PF&R insofar as it recommends denial of the defendants' Motion to Dismiss; the defendants cannot show, based on the pleadings alone, that the plaintiff has failed to state a claim upon which relief can be granted. Thus, the defendants' Motion to Dismiss [Docket 13] is **DENIED** without prejudice. This case is re-referred to the Magistrate

Judge for further proceedings consistent with this Order. The plaintiff's Motion for Discovery [Docket 34] is also referred to the Magistrate Judge.

The Clerk is **DIRECTED** to forward copies of this written opinion and order to all counsel of record and any unrepresented parties.

ENTER: January 8, 2010


Joseph R. Goodwin, Chief Judge