

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PERRY LEWIS MCARTHUR : CIVIL ACTION  
v. :  
VINCENT A. GUARINI, et al. : NO. 98-2404

M E M O R A N D U M O R D E R

Under the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321 (April 26, 1996) (the "Act"), a prisoner who seeks to file a civil action in forma pauperis must pay the \$150 filing fee. § 804(a)(3). The court must "assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of-- '(A) the average monthly deposits to the prisoner's account; or '(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint." Id. After payment of the initial partial filing fee, the plaintiff is "required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid." Id.

Plaintiff's inmate trust fund account statement for the 6-month period immediately preceding the submission of his complaint shows average monthly deposits of \$0, and negative average monthly and current balances. Accordingly, plaintiff will not be assessed an initial partial filing fee. However, the

warden or other appropriate official at the Lancaster County prison or any other prison at which plaintiff may be incarcerated will be directed to deduct from his prison account, whenever the balance exceeds \$10, 20 percent of the funds credited to his account during the preceding month and forward that amount to the Clerk of Court until the entire \$150 filing fee is paid.

The Court must still dismiss plaintiff's case at any time if it determines that it is legally frivolous, fails to state a claim upon which relief may be granted or seeks monetary relief against a defendant who is legally immune. § 804(5). If this case is dismissed, there is no provision in the Act to reduce or remit any portion of the required filing fee.

**ACCORDINGLY**, this            day of May, 1998, **IT IS HEREBY ORDERED** that within twenty (20) days plaintiff file with the Court a notice advising that he wishes to proceed with this action and accept responsibility for the \$150 fee or that he wishes to withdraw and discontinue this action.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**