

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

JAMES WILLIAMS	:	CIVIL ACTION
	:	
	:	
v.	:	NO. 04-4160
	:	
	:	
JEFFREY M. LINDY	:	

MEMORANDUM AND ORDER

Savage, J.

November 30, 2004

Plaintiff, a state prisoner at USP Florence, Colorado, seeks to bring a civil action *in forma pauperis*, asserting claims pursuant to 42 U.S.C. § 1983.¹ He has not paid the filing fee nor provided security for the fee.

The Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321 (April 26, 1996) (“PLRA”), which amends 28 U.S.C. § 1915, establishes financial requirements for prisoners bringing a civil action or filing an appeal *in forma pauperis*. Under the PLRA, a prisoner seeking to proceed *in forma pauperis* must pay the full amount of the \$150 filing fee. 28 U.S.C.A. § 1915(b)(1) (Supp. 2003). The prisoner must submit a certified copy of his inmate trust fund account statement for the six-month period immediately preceding the filing of his complaint so the Court can determine how the \$150 filing fee will be paid. 28 U.S.C.A. § 1915(a)(2). The prisoner must obtain this statement from the appropriate official of each prison at which he was or is confined. *Id.* The Court must then “assess [the prisoner’s financial status] 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

¹ Suits brought *in forma pauperis* are governed by 28 U.S.C. §1915.

average monthly deposits to the prisoner's account; or (B) the average monthly balance in the prisoner's account for the six-month period immediately preceding the filing of the complaint" 28 U.S.C.A. § 1915(b)(1).²

Plaintiff's inmate trust fund account statement for the six-month period immediately preceding the filing of this complaint shows average monthly deposits of \$157.96, average monthly balances of \$15.84, and a current balance of \$39.99. Based upon this financial information, an initial partial filing fee of \$31.58 is assessed. The Warden or other appropriate official at USP Florence, or at any prison at which plaintiff may be incarcerated, will be directed to deduct \$31.58 from the plaintiff's prison account, when such funds become available, and forward that amount to the Clerk of the United States District Court for the Eastern District of Pennsylvania. Thereafter, each time that the balance in plaintiff's inmate trust account exceeds ten dollars (\$10.00), an amount no greater than 20 percent of the money credited to plaintiff's account during the preceding month will be deducted and forwarded to the Clerk of Court until the filing fee is paid.

The Court must dismiss the case if it finds that the action: (1) is frivolous or malicious; (2) fails to state a claim upon which relief may be granted; or, (3) seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C.A. § 1915(e)(2)(B). If the Court dismisses the case for any of these reasons, the filing fee or any part which has been paid will not be refunded to the plaintiff.

When he brought this action, the plaintiff may not have known that he must pay the filing fee. We shall give the plaintiff twenty (20) days from the date of this Order to decide

² After the initial partial filing fee is paid, 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 [is required to] 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." 28 U.S.C.A. § 1915(b)(2).

whether he wants to proceed with this case. If the plaintiff decides not to proceed with the case, he need not pay the \$150 filing fee.

TIMOTHY J. SAVAGE, J.

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ORDER

AND NOW, this 30th day of November, 2004, it is **ORDERED** as follows:

1. The petition is **DENIED WITHOUT PREJUDICE**;
2. If the plaintiff files with the Clerk within twenty (20) days from the date of this Order a notice that he wishes to proceed with this action and obligates himself to pay the \$150.00 filing fee, this action will be reinstated; and,
3. The Clerk shall deliver to the petitioner with a copy of this Order the Notice to Prisoners Filing a 42 U.S.C. § 1983 Civil Rights Complaint in the United States District Court for the Eastern District of Pennsylvania.

TIMOTHY J. SAVAGE, J.