

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EARLAND J. COLLINS,

Plaintiff,

v.

CASE NO. 2:09-CV-12858
HONORABLE MARIANNE O. BATTANI

HARPER WOODS POLICE DEPT.,

Defendant.

**OPINION AND ORDER DENYING LEAVE TO PROCEED WITHOUT
PREPAYMENT OF THE FILING FEE AND DISMISSING COMPLAINT**

This matter is before the Court on Plaintiff's *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983. Plaintiff seeks leave to proceed without prepayment of the filing fee for this action. *See* 28 U.S.C. § 1915(a)(1). On August 4, 2009, the Court issued an order requiring Plaintiff to correct a filing deficiency and to show cause why his complaint should not be dismissed pursuant to the "three strikes" provision of 28 U.S.C. § 1915(g). On August 31, 2009, Plaintiff corrected the filing deficiency but did not respond to the show cause portion of the Court's order.

Under the Prison Litigation Reform Act ("PLRA"), the Court may dismiss a case if, on three (3) or more previous occasions, a federal court has dismissed the incarcerated plaintiff's action because it was frivolous or malicious or failed to state a claim upon which relief may be granted. *See* 28 U.S.C. § 1915(g). The Court's database reveals that Plaintiff has filed at least

three (3) prior cases in federal court which have been dismissed as frivolous or for failure to state a claim upon which relief may be granted. *See:*

<u>Case No.</u>	<u>Defendant(s)</u>	<u>Dismissal Date</u>	<u>U.S. District Judge</u>
08-CV-14881	Wayne Co. Pros.	12/22/2008	Paul D. Borman
09-CV-11785	Warren Police Dept.	06/04/2009	Nancy G. Edmunds
09-CV-12315	Frank Murphy Hall	06/22/2009	Nancy G. Edmunds

Plaintiff has not responded to the show cause order and his complaint concerns alleged police misconduct and his criminal proceedings. He neither alleges nor establishes that he “is under imminent danger of serious physical injury” so as to fall within the exception to the three strikes provision set forth in 28 U.S.C. § 1915(g). Plaintiff has thus failed to establish that he should be allowed to proceed on his complaint *in forma pauperis* despite the fact that he has had more than three prior lawsuits dismissed as frivolous or for failure to state a claim upon which relief may be granted.

Accordingly, the Court **DENIES** Plaintiff’s request for leave to proceed without prepayment of the filing fee. Plaintiff is not authorized to proceed before this Court *in forma pauperis* pursuant to 28 U.S.C. § 1915(g). Additionally, the Court **DISMISSES** Plaintiff’s complaint pursuant to 28 U.S.C. § 1915(g). This dismissal is without prejudice to the filing of a new complaint with payment of the \$350.00 filing fee. The Court notes that any such complaint will be reviewed to determine whether it should be served upon the defendant or summarily dismissed under 28 U.S.C. § 1915A(b), which requires the Court to dismiss a complaint brought against governmental entities, officers, and employees if the complaint is “frivolous, malicious, or fails to state a claim upon which relief may be granted.”

Lastly, the Court concludes that an appeal from this order would be frivolous and, therefore, cannot be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); *see also McGore v. Wrigglesworth*, 114 F.3d 601, 610-11 (6th Cir. 1997).

IT IS SO ORDERED.

s/Marianne O. Battani
MARIANNE O. BATTANI
UNITED STATES DISTRICT JUDGE

Dated: November 3, 2009

CERTIFICATE OF SERVICE

I hereby certify that on the above date a copy of this Opinion and Order was served upon the Petitioner, Earland J. Collins, via ordinary U.S. Mail.

s/Bernadette M. Thebolt
Case Manager