

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 KESHONE OWENS,

Case No. 2:19-cv-00126-RFB-BNW

4 Plaintiff,

ORDER

5 v.

6 JAMES DZURENDA, et al.,

7 Defendants.
8

9 **1. DISCUSSION**

10 This action began with a pro se civil rights complaint filed pursuant to 42 U.S.C. §
11 1983 by a state prisoner. Plaintiff has submitted an application to proceed *in forma*
12 *pauperis*. (ECF Nos. 1,4.)¹ The Court issued an order screening Plaintiff's complaint on
13 March 2, 2020. (ECF No. 8.) The screening order stayed this case and deferred a
14 decision on Plaintiff's application to proceed *in forma pauperis* so that the parties could
15 engage in the Court's Inmate Early Mediation program before a filing fee had to be paid.
16 (*Id.*) The parties participated in a mediation conference, but a settlement was not
17 reached. (ECF No. 19). Accordingly, the Court now addresses Plaintiff's application to
18 proceed *in forma pauperis*.

19 Based on Plaintiff's financial certificate (ECF No. 4), Plaintiff does not qualify to
20 proceed *in forma pauperis*. Therefore, the Court denies Plaintiff's motion to proceed *in*
21 *forma pauperis* (ECF No. 1) without prejudice. Plaintiff must pay the full \$400 fee for filing
22 a civil action (which includes the \$350 filing fee and the \$50 administrative fee) within 30
23 days. Alternatively, if Plaintiff believes that his circumstances have changed and that he
24 now qualifies to proceed *in forma pauperis*, Plaintiff may file a new application to proceed
25 *in forma pauperis* within 30 days. The stay in this case will remain in effect until Plaintiff
26

27 ¹ The Court previously denied Plaintiff's application to proceed *in forma pauperis*
28 because it did not include a financial certificate. (ECF No. 3.) However, Plaintiff later
filed the financial certificate. (ECF No. 4.) As such, the Court will reconsider Plaintiff's
application to proceed *in forma pauperis*.

1 either pays the filing fee or the Court rules on any new application to proceed *in forma*
2 *pauperis*.

3 After the Court issued its screening order staying this action, Plaintiff filed three
4 motions regarding setting a date for the mediation conference. (ECF Nos. 11, 13, 14.)
5 Because the parties have participated a mediation conference, the Court denies these
6 motions as moot.

7 **II. CONCLUSION**

8 For the foregoing reasons, IT IS ORDERED that Plaintiff's application to proceed
9 in forma pauperis (ECF No. 1) is DENIED without prejudice to file a new application.

10 IT IS FURTHER ORDERED that the Clerk of the Court SHALL SEND Plaintiff the
11 approved form application to proceed in forma pauperis by a prisoner, as well as the
12 document entitled information and instructions for filing an in forma pauperis application.

13 IT IS FURTHER ORDERED that within thirty (30) days from the date of this order,
14 Plaintiff shall either: (1) pay the full \$400 fee for filing a civil action (which includes the
15 \$350 filing fee and the \$50 administrative fee); or (2) file a fully complete application to
16 proceed in forma pauperis, on the correct form with complete financial attachments in
17 compliance with 28 U.S.C. § 1915(a).

18 IT IS FURTHER ORDERED that if Plaintiff does not timely comply with this order,
19 this case will be dismissed without prejudice.

20 IT IS FURTHER ORDERED that Plaintiff's motions regarding the status of the
21 mediation conference (ECF Nos. 11, 13, 14) are denied as moot.

22 IT IS FURTHER ORDERED that the stay in this case remains in place. Neither
23 party should file any motions or documents, except that Plaintiff may file a new application
24 to proceed *in forma pauperis*.

25 DATED THIS 10th day of September 2020.

26
27 
28 UNITED STATES MAGISTRATE JUDGE

United States District Court
DISTRICT OF NEVADA

Plaintiff/Petitioner,

v.

**APPLICATION TO PROCEED
IN FORMA PAUPERIS
FOR INMATE**

CASE NUMBER:

Defendant/Respondent,

I, _____, declare that I am the (check the appropriate box)

- | | |
|---|---|
| <input type="checkbox"/> Plaintiff
(filing 42 U.S.C. § 1983) | <input type="checkbox"/> Movant
(filing 28 U.S.C. § 2255 motion) |
| <input type="checkbox"/> Petitioner
(writ of habeas corpus
28 U.S.C. §§ 2254 or 2241) | <input type="checkbox"/> Other
<input type="checkbox"/> Defendant/Respondent |

in this case. I am unable to prepay the fees of this proceeding or give security because of my poverty. I acknowledge and consent that a portion of any recovery, as directed by the court, shall be paid to the clerk for reimbursement of all fees incurred by me as a result of being granted leave to proceed in forma pauperis.

In further support of this application, I answer the following questions:

1. Are you presently employed? Yes No
 - a. If the answer is “yes,” state the amount of your salary or wages per month, and give the name and address of your employer. (List gross and net salary.)
 - b. If the answer is “no,” state the date of last employment and the amount of the salary or wages per month which you received.

2. Have you received within the past twelve months any money from any of the following sources?
 - a. Business, profession or other form of self-employment? Yes No

- b. Rent payments, interest or dividends? Yes No
- c. Pensions, annuities or life insurance payments? Yes No
- d. Gifts or inheritances? Yes No
- e. Any other sources? Yes No

If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months.

3. Do you own any cash, or do you have money in checking or savings accounts (include any funds in prison accounts, and any funds on deposit with a bank, saving & loan, etc., outside the prison) ?
- Yes No

If the answer is "yes," state the total value and list the location of each account, type of account, and amount or balance in the account. Do not include your account number(s).

4. Do you own or have any interest in any real estate, stocks, bonds, notes, trusts, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?
- Yes No

If the answer is "yes," describe the property, its location and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support each month.

6. Do you receive any income from disability, Social Security or any other pension?
- Yes No

If the answer is "yes," describe the source and amount received each month.

7. Have you placed any property, assets or money in the name or custody of anyone else in the last two years?
- Yes No

If the answer is "yes," give the date, describe the property, assets or money, give the name of the person given custody of the item and the reason for the transfer.

ACKNOWLEDGMENT

I, the undersigned, acknowledge that I have read the foregoing and that the information contained therein is true and correct to my own knowledge and belief.

Further, I state that I have not directly or indirectly paid or caused to be paid to any inmate, agent of an inmate, or family member of any inmate a sum of money, favors or anything else for assistance in the preparation of this document or any other document in connection with this action.

Further, I acknowledge that if any of the information included in this motion for leave to proceed in forma pauperis is false or misleading, I understand that sanctions may be imposed against me. Those sanctions may include, but are not limited to, the following:

- (1) dismissal of my case with prejudice;
- (2) imposition of monetary sanctions;
- (3) the Nevada Department of Prisons may bring disciplinary proceedings for a violation of MJ-48 of the Code of Penal Discipline, which can include all sanctions authorized under the Code including the loss of good time credits and punitive confinement; and
- (4) perjury charges.

Further, I hereby authorize the United States District Court, District of Nevada, or its representative, to investigate my financial status, and authorize any individual, corporation, or governmental entity to release any such information to the said Court or its representative.

Further, I acknowledge and consent that a portion of any recovery, as directed by the court, shall be paid to the clerk for reimbursement of all fees and costs incurred by me as a result of being granted leave to proceed in forma pauperis.

Dated this _____ day of _____, 20__.

(Signature of Applicant)

I understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury. **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.** See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

Signed at _____
(Location)

(Signature)

(Date)

(Inmate Prison Number)

