

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WO

JDN

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Charles Welvon Eaden, Jr.,

Plaintiff,

vs.

Diana Patton,
et al.,

Defendants.

No. CV 05-3492-PHX-JAT (CRP)

ORDER

Plaintiff, confined in the Dakota Unit at the Arizona State Prison in Yuma, Arizona, has filed a *pro se* complaint pursuant to 42 U.S.C. § 1983. Plaintiff has not paid the \$250.00 civil action filing fee, nor has he filed a proper Application to *Proceed In Forma Pauperis*.

A. Payment of Filing Fee

A prisoner must pay the \$250.00 civil action filing fee either in a lump sum or when granted the privilege of proceeding *in forma pauperis*, incrementally pursuant to 28 U.S.C. § 1915(b)(1). To apply to proceed *in forma pauperis*, the prisoner must submit an affidavit of indigence and a *certified* copy of his trust account statement for the six months preceding the filing of the Complaint. See 28 U.S.C. § 1915(a)(2). He must include statements from each institution where he was confined during the six months preceding the filing of the Complaint. Id. To assist prisoners in meeting these requirements, the Court requires use of a form application under Local Rule of Civil Procedure 3.4(a).

JDDL

1 After proper *in forma pauperis* application has been made, the Court will assess an
2 initial partial filing fee equal to 20% of either the average monthly deposits or the average
3 monthly balance in Plaintiff's account, whichever is greater. 28 U.S.C. § 1915(b)(1). The
4 initial partial filing fee will be collected when funds exists. 28 U.S.C. § 1915(b)(4). The
5 remaining part of the filing fee is made in monthly payments equaling 20% of the preceding
6 month's income credited to an inmate's account, until the entire filing fee is paid in full. 28
7 U.S.C. § 1915(b)(2). The agency having custody of Plaintiff will be ordered to forward
8 payments to the Clerk of Court each time the amount in the account exceeds \$10.00. Id.

9 **B. Application Fails to Comply With Statute**

10 Plaintiff has not paid the statutory filing fee nor has he attached a proper Application
11 to *Proceed In Forma Pauperis*. He must provide the proper form with a signed and dated
12 Consent to Collection of Fees from Trust Account. Plaintiff must also fill out the Certificate
13 of Correctional Official as to Status of Applicant's Trust Account, and submit a certified six-
14 month trust account statement. In light of these deficiencies, Plaintiff will be permitted 30
15 days to file a complete *in forma pauperis* application.

16 **C. Warning: Change of Address and Copies of Filings**

17 At all times during the pendency of this action, Plaintiff shall immediately advise the
18 Court of any change of address and its effective date. Such notice shall be captioned
19 "NOTICE OF CHANGE OF ADDRESS." The notice shall contain only information
20 pertaining to the change of address and its effective date. The notice shall not include any
21 motions for any other relief. Failure to file a Notice of Change of Address may result in the
22 dismissal of the action for failure to prosecute pursuant to Rule 41(b) of the Federal Rules
23 of Civil Procedure.

24 A clear, legible copy of every pleading or other document filed shall accompany each
25 original pleading or other document filed with the Clerk for use by the District Judge or
26 Magistrate Judge to whom the case is assigned. See LRCiv 5.4. Failure to comply with this
27 requirement may result in striking the pleading or document without further notice to
28 Plaintiff.

1 **D. Rule 41 Warning of Possible Dismissal**

2 Plaintiff is warned that failure to timely comply with every provision of this Order,
3 or any order entered in this matter, will result in dismissal of this action pursuant to Rule
4 41(b) of the Federal Rules of Civil Procedure. See Ferdik v. Bonzelet, 963 F.2d 1258 (9th
5 Cir. 1992) (district court may dismiss action for failure to comply with any order of the
6 court).

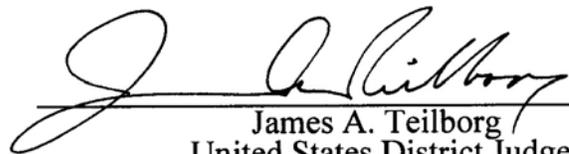
7
8 **IT IS THEREFORE ORDERED that:**

9 (1) Plaintiff shall have 30 days from the date this Order is filed to either pay the
10 \$250.00 filing fee **or** to file with the Court (a) a signed and dated Consent to Collection of
11 Fees from Trust Account, (b) a Certificate of Correctional Official as to Status of Applicant's
12 Trust Account, certified by the proper individual at his institution, and (c) a trust account
13 statement for the six-month period preceding the filing of the Complaint.

14 (2) The Clerk of Court shall enter dismissal of this action without prejudice and
15 without further notice if Plaintiff fail to comply with this Order.

16 (3) The Clerk of the Court shall provide to Plaintiff a current court-approved form
17 for filing an Application to Proceed In Forma Pauperis (Non-Habeas).

18 DATED this 9th day of November, 2005.

19
20
21 
22 _____
23 James A. Teilborg
24 United States District Judge
25
26
27
28

**Instructions for Prisoners Applying for Leave to Proceed *in Forma Pauperis*
Pursuant to 28 U.S.C. § 1915 in a Civil Action (Non-habeas) in Federal Court**

You must pay the full filing fee of \$250.00 for a civil action. If you later file an appeal, you will be obligated to pay the \$255.00 filing fee for the appeal.

If you have enough money to pay the full filing fee, you should send a cashier's check or money order payable to the Clerk of the Court with your complaint, petition, or notice of appeal.

If you do not have enough money to pay the full filing fee, you can file the action without prepaying the filing fee. However, the court will assess an initial partial filing fee. The initial partial filing fee will be the greater of 20% of the average monthly deposits or 20% of the average monthly balance in your prison or jail account for the six months immediately preceding the filing of the lawsuit. The court will order the agency that has custody of you to withdraw the initial partial filing fee from your prison or jail account as soon as funds are available and to forward the money to the court.

After the initial partial filing fee has been paid, you will owe the balance of the filing fee. Until the filing fee is paid in full, each month you will owe 20% of your preceding month's income. The agency that holds you in custody will collect that money and forward it to the court any time the amount in your account exceeds \$10.00. The balance of the filing fee may be collected even if the action is later dismissed, summary judgment is granted against you, or you fail to prevail at trial.

To file an action without prepaying the filing fee, and to proceed with an action *in forma pauperis*, you must complete the attached form and return it to the court with your complaint. You must have a prison or jail official complete the certificate on the bottom of the form and attach a certified copy of your prison or jail account statement for the last six months. If you were incarcerated in a different institution during any part of the past six months, you must attach a certificate and a certified copy of your account statement from each institution at which you were confined. If you submit an incomplete form or do not submit a prison or jail account statement with the form, your request to proceed *in forma pauperis* will be denied.

Even if some or all of the filing fee has been paid, the court is required to dismiss your action if: (1) your allegation of poverty is untrue; (2) the action is frivolous or malicious; (3) your complaint does not state a claim upon which relief can be granted; or (4) your complaint makes a claim against a defendant for money damages and that defendant is immune from liability for money damages.

If you file more than three actions or appeals which are dismissed as frivolous or malicious or for failure to state a claim on which relief can be granted, you will be prohibited from filing any other action *in forma pauperis* unless you are in imminent danger of serious physical injury.

Name and Prisoner/Booking Number

Place of Confinement

Mailing Address

City, State, Zip Code

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

_____,)
Plaintiff,) CASE NO. _____
vs.)
_____,)
Defendant(s).)
_____)

APPLICATION TO PROCEED
IN FORMA PAUPERIS
BY A PRISONER
CIVIL (NON-HABEAS)

I, _____, declare, in support of my request to proceed in the above entitled case without prepayment of fees under 28 U.S.C. § 1915, that I am unable to pay the fees for these proceedings or to give security therefor and that I believe I am entitled to relief.

In support of this application, I answer the following questions under penalty of perjury:

1. Have you ever before brought an action or appeal in a federal court while you were incarcerated or detained? Yes No If "Yes," how many have you filed? _____.
Were any of the actions or appeals dismissed because they were frivolous, malicious, or failed to state a claim upon which relief may be granted? Yes No If "Yes," how many of them? _____.
2. Are you currently employed at the institution where you are confined? Yes No
If "Yes," state the amount of your pay and where you work. _____

3. Do you receive any other payments from the institution where you are confined? Yes No
If "Yes," state the source and amount of the payments. _____

4. Do you have any other sources of income, savings, or assets either inside or outside of the institution where

you are confined?

Yes

No

If "Yes," state the sources and amounts of the income, savings, or assets. _____

I declare under penalty of perjury that the above information is true and correct.

DATE

SIGNATURE OF APPLICANT

CONSENT TO COLLECTION OF FEES FROM TRUST ACCOUNT

I, _____, hereby consent to having the designated correctional officials at this institution release to the Court my trust account information. I further consent to having the designated correctional officials at this institution withdraw from my trust account the funds required to comply with the order of this Court for the payment of filing fees in accordance with 28 U.S.C. § 1915(b).

My consent includes withdrawal from my account by correctional officials of partial initial payments to this Court equal to 20% of the greater of:

(A) the average monthly deposits to my account for the six-month period preceding my filing of this action, or

(B) the average monthly balance in my account for the six-month period preceding my filing of this action.

My consent also includes monthly withdrawals from my account by correctional officials of an amount equal to 20% of each month's income. Whenever the amount in my account reaches \$10, correctional officials will withdraw that amount and forward it to the Court until the required filing fee is paid in full. I understand that I am liable for paying the entire fee, even if my case is dismissed by the Court before the fee is fully paid.

DATE

SIGNATURE OF APPLICANT

**CERTIFICATE OF CORRECTIONAL OFFICIAL
AS TO STATUS OF APPLICANT'S TRUST ACCOUNT**

I, _____, certify that as of the date applicant signed this application:

(Printed name of official)

The applicant's trust account balance at this institution is: \$ _____

The applicant's average monthly deposits during the prior six months is: \$ _____

The applicant's average monthly balance during the prior six months is: \$ _____

The attached certified account statement accurately reflects the status of the applicant's account.

DATE

AUTHORIZED SIGNATURE

TITLE/ID NUMBER

INSTITUTION