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

Christopher Roy Bowers,
Plaintiff,
vs.
Duane Belcher, et al.,
Defendants.

No. CV 09-1686-PHX-RCB (MHB)

ORDER

Plaintiff Christopher Roy Bowers, who is confined in the Arizona State Prison in Picacho, Arizona, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and an Application to Proceed *In Forma Pauperis*. On September 18, 2009, the Court denied the Application to Proceed with leave to re-file. On November 4, 2009, Plaintiff filed a “Motion for 30-day Continuance to Proceed and Submit Forma Pauperis Application” (Doc. #7) and lodged a new Application to Proceed. The Court will grant the Motion for Continuance, direct the Clerk of Court to file the new Application to Proceed, and deny the new Application to Proceed. Plaintiff will be granted a final 30 days to file a complete Application to Proceed and certified six-month trust account statement.

I. Motion for Continuance

In his Motion for Continuance, Plaintiff states that because he was transferred to a new facility, he did not receive the Court’s September 18th Order until after the deadline for

1 filing a new Application to Proceed had passed. The Court will grant Plaintiff's Motion for
2 Continuance, will accept the lodged Application to Proceed as timely filed, and will direct
3 the Clerk of Court to file the lodged Application to Proceed.

4 In his Motion for Continuance, Plaintiff also states that he wishes to amend his
5 original Complaint. The Federal Rules of Civil Procedure provide that "[a] party may
6 amend its pleading once as a matter of course . . . before being served with a responsive
7 pleading." As Defendants have not yet been served, Plaintiff may file an amended
8 complaint. Plaintiff should note that the Court will not screen an amended complaint until
9 Plaintiff has complied with the requirements for proceeding *in forma pauperis* or has paid
10 the filing fee.

11 **II. Payment of Filing Fee**

12 When bringing an action, a prisoner must either pay the \$350.00 filing fee in a lump
13 sum or, if granted the privilege of proceeding *in forma pauperis*, pay the fee incrementally
14 as set forth in 28 U.S.C. § 1915(b)(1). An application to proceed *in forma pauperis* requires
15 an affidavit of indigence and a *certified* copy of the inmate's trust account statement for the
16 six months preceding the filing of the Complaint. 28 U.S.C. § 1915(a)(2). An inmate must
17 submit statements from each institution where he was confined during the six-month period.
18 Id. To assist prisoners in meeting these requirements, the Court requires use of a form
19 application. LRCiv 3.4(a).

20 If a prisoner is granted leave to proceed *in forma pauperis*, the Court will assess an
21 initial partial filing fee of 20% of either the average monthly deposits or the average monthly
22 balance in Plaintiff's account, whichever is greater. 28 U.S.C. § 1915(b)(1). An initial
23 partial filing fee will only be collected when funds exist. 28 U.S.C. § 1915(b)(4). The
24 balance of the fee will be collected in monthly payments of 20% of the preceding month's
25 income credited to an inmate's account, each time the amount in the account exceeds \$10.00.
26 28 U.S.C. § 1915(b)(2).

1 **III. Application Fails to Comply With Statute**

2 Plaintiff has used the court-approved form to file his new Application, but he has not
3 submitted a **certified** six-month trust account statement. In light of this deficiency, Plaintiff
4 will be permitted 30 days to either pay the \$350.00 filing fee or file a complete Application
5 to Proceed *In Forma Pauperis* and certified six-month trust account statement.

6 Although Plaintiff attached a printout of his Arizona Department of Corrections
7 (“ADOC”) inmate bank account statement to his Application to Proceed, the printout is not
8 certified by an authorized officer of the institution and does not show deposits and average
9 monthly balances, as required. ADOC has notified the Court that a certified trust fund
10 account statement showing deposits and average monthly balances is available from the
11 ADOC’s Central Office. *Accordingly, Plaintiff must obtain the certified copy of his ADOC*
12 *trust fund account statement for the six months immediately preceding the filing of the*
13 *Complaint from the ADOC’s Central Office.*

14 **IV. Warnings**

15 **A. Address Changes**

16 Plaintiff must file and serve a notice of a change of address in accordance with Rule
17 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
18 relief with a notice of change of address. Failure to comply may result in dismissal of this
19 action.

20 **B. Copies**

21 Plaintiff must submit an additional copy of every filing for use by the Court. See
22 LRCiv 5.4. Failure to comply may result in the filing being stricken without further notice
23 to Plaintiff.

24 **C. Possible Dismissal**

25 If Plaintiff fails to timely comply with every provision of this Order, including these
26 warnings, the Court may dismiss this action without further notice. See *Ferdik v. Bonzelet*,
27 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to
28 comply with any order of the Court).

1 **IT IS ORDERED:**

2 (1) Plaintiff's November 4, 2009 Motion for Continuance (Doc. #7) is **granted**.
3 The Court will accept Plaintiff's November 4, 2009 Application to Proceed *In Forma*
4 *Pauperis* as timely filed.

5 (2) The Clerk of Court **must file** Plaintiff's November 4, 2009 Application to
6 Proceed *In Forma Pauperis* (lodged as Doc. #8).

7 (3) Plaintiff's November 4, 2009 Application to Proceed *In Forma Pauperis*
8 (lodged as Doc. #8) is **denied without prejudice**.

9 (4) Within 30 days of the date this Order is filed, Plaintiff must either pay the
10 \$350.00 filing fee **or** file a completed Application to Proceed *In Forma Pauperis* and a
11 certified six-month trust account statement **from the ADOC's Central Office**.

12 (5) If Plaintiff fails to either pay the \$350.00 filing fee or file a completed
13 Application to Proceed *In Forma Pauperis* within 30 days, the Clerk of Court must enter a
14 judgment of dismissal of this action without prejudice and without further notice to Plaintiff.

15 (6) The Clerk of the Court must mail Plaintiff a court-approved form for filing
16 an Application to Proceed *In Forma Pauperis* (Non-Habeas).

17 Dated this 7th day of December, 2009.

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21 Robert C. Broomfield
22 Senior United States District Judge
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