

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

SC

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

Richard S. Riess,
Plaintiff,
vs.
Kristine Brisson, et al.,
Defendants.

No. CV 09-2185-PHX-RCB (ECV)

ORDER

Plaintiff Richard S. Riess, who is confined in the Eloy Detention Center in Eloy, Arizona, has filed a *pro se* civil rights Complaint pursuant to Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971). (Doc.# 1, 3.) Plaintiff has not paid the \$350.00 civil action filing fee or filed a proper Application to Proceed *In Forma Pauperis*. The Court will give Plaintiff 30 days to pay the fee or file a completed Application to Proceed *In Forma Pauperis*.

I. Payment of Filing Fee

When bringing an action, a prisoner must either pay the \$350.00 filing fee in a lump sum or, if granted the privilege of proceeding *in forma pauperis*, pay the fee incrementally as set forth in 28 U.S.C. § 1915(b)(1). An application to proceed *in forma pauperis* requires an affidavit of indigence and a *certified* copy of the inmate’s trust account statement for the six months preceding the filing of the Complaint. 28 U.S.C. § 1915(a)(2). An inmate must submit statements from each institution where he was confined during the six-month period.

1 Id. To assist prisoners in meeting these requirements, the Court requires use of a form
2 application. LRCiv 3.4(a).

3 If a prisoner is granted leave to proceed *in forma pauperis*, the Court will assess an
4 initial partial filing fee of 20% of either the average monthly deposits or the average monthly
5 balance in Plaintiff's account, whichever is greater. 28 U.S.C. § 1915(b)(1). An initial
6 partial filing fee will only be collected when funds exist. 28 U.S.C. § 1915(b)(4). The
7 balance of the fee will be collected in monthly payments of 20% of the preceding month's
8 income credited to an inmate's account, each time the amount in the account exceeds \$10.00.
9 28 U.S.C. § 1915(b)(2).

10 **II. Application Fails to Comply With Statute**

11 Plaintiff has used the court-approved form, but he has left blank the "Consent to
12 Collection of Fees from Trust Account" section. This part of the *in forma pauperis*
13 application must be filled out, signed, and dated. He also has failed to sign the declaration
14 under penalty of perjury. In light of these deficiencies, Plaintiff will be permitted 30 days
15 to either pay the \$350.00 filing fee or file a complete Application to Proceed *In Forma*
16 *Pauperis*.

17 **III. Warnings**

18 **A. Address Changes**

19 Plaintiff must file and serve a notice of a change of address in accordance with Rule
20 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
21 relief with a notice of change of address. Failure to comply may result in dismissal of this
22 action.

23 **B. Copies**

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

27 **C. Possible Dismissal**

28 If Plaintiff fails to timely comply with every provision of this Order, including these

1 warnings, the Court may dismiss this action without further notice. See Ferdik v. Bonzelet,
2 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to
3 comply with any order of the Court).

4 **IT IS ORDERED:**

5 (1) Plaintiff's Application to Proceed *In Forma Pauperis*, filed with the Complaint,
6 is **denied without prejudice**. (Doc.# 3.)

7 (2) Within 30 days of the date this Order is filed, Plaintiff must either pay the
8 \$350.00 filing fee **or** file a completed Application to Proceed *In Forma Pauperis* and a
9 certified six-month trust account statement.

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

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

15 DATED this 9th day of December, 2009.

16
17
18 
19 _____
20 Robert C. Broomfield
21 Senior United States District Judge
22
23
24
25
26
27
28