

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**

Byron Sanders,
Plaintiff,
vs.
Detention Officer Bougler, et al.,
Defendants.

No. CV 10-0327-PHX-MHM (MHB)

ORDER

Plaintiff Byron Sanders, who is confined in the Pinal County Jail in Florence, Arizona, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983, but failed to pay the \$350.00 civil action filing fee or file a proper Application to Proceed *In Forma Pauperis* Civil (Non-Habeas).¹ The Court denied his *in forma pauperis* application with leave to either pay the \$350.00 filing fee or to file a properly completed “Application to Proceed *In Forma Pauperis* Civil (Non-Habeas).” (Doc.# 7.) Plaintiff has filed an Application to Proceed *In Forma Pauperis* (Non-Habeas), which is incomplete. (Doc.# 8.) The Court will deny the new *in forma pauperis* application and grant Plaintiff an additional 30 days to either

¹ On February 16, 2010, Plaintiff filed an “Application to Proceed *In Forma Pauperis* by a Prisoner (Habeas)” and he filed another “Application to Proceed *In Forma Pauperis* by a Prisoner (Habeas)” on February 22, 2010. (Doc.# 3, 4.) Because Plaintiff seeks relief under 42 U.S.C. § 1983, he must file a properly-completed “Application to Proceed *In Forma Pauperis* by a Prisoner Civil (Non-Habeas),” as discussed below.

1 pay the \$350.00 filing fee or to file a properly completed Application to Proceed *In Forma*
2 *Pauperis* (Non-Habeas).

3 **I. Payment of Filing Fee**

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

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

12 If a prisoner is granted leave to proceed *in forma pauperis*, the Court will assess an
13 initial partial filing fee of 20% of either the average monthly deposits or the average monthly
14 balance in Plaintiff’s account, whichever is greater. 28 U.S.C. § 1915(b)(1). An initial
15 partial filing fee will only be collected when funds exist. 28 U.S.C. § 1915(b)(4). The
16 balance of the fee will be collected in monthly payments of 20% of the preceding month’s
17 income credited to an inmate’s account, each time the amount in the account exceeds \$10.00.
18 28 U.S.C. § 1915(b)(2).

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

20 Plaintiff has used the appropriate court-approved form to proceed without pre-
21 payment in full for an action under 42 U.S.C. § 1983 and has completed the “Consent to
22 Collection of Fees from Trust Account” section. However, Plaintiff has failed to have the
23 “Certificate of Correctional Official as to Status of Applicant’s Trust Account” section
24 completed. In light of that deficiency, Plaintiff will be permitted 30 days to either pay the
25 \$350.00 filing fee or file a complete Application to Proceed *In Forma Pauperis* (Non-
26 Habeas).

27 ///

1 **III. Warnings**

2 **A. Address Changes**

3 Plaintiff must file and serve a notice of a change of address in accordance with Rule
4 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
5 relief with a notice of change of address. Failure to comply may result in dismissal of this
6 action.

7 **B. Copies**

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

11 **C. Possible Dismissal**

12 If Plaintiff fails to timely comply with every provision of this Order, including these
13 warnings, the Court may dismiss this action without further notice. See *Ferdik v. Bonzelet*,
14 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to
15 comply with any order of the Court).

16 **IT IS ORDERED:**

17 (1) Plaintiff's Applications to Proceed *In Forma Pauperis* (Non-Habeas) is **denied**
18 **without prejudice**. (Doc.# 8.)

19 (2) Within 30 days of the date this Order is filed, Plaintiff must either pay the
20 \$350.00 filing fee **or** file a completed Application to Proceed *In Forma Pauperis* Civil (Non-
21 Habeas) and a certified six-month trust account statement.

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

25 ///

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

3 DATED this 7th day of April, 2010.

4
5
6 
7 Mary H. Murgula
8 United States District Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28