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

Christopher Stoller,  
Plaintiff,  
vs.  
Bank of New York Mellon Trust, et al.,  
Defendants.

No. CV 11-01105-PHX-GMS-JRI  
**ORDER**

On November 7, 2011, the Court dismissed this action without prejudice after Plaintiff failed to either pay the \$350.00 filing fee or to file an Application for Leave to Proceed *In Forma Pauperis* using the court-approved form for prisoners. (Doc. 63.) On November 16, 2011, Plaintiff filed a motion for reconsideration and a motion to proceed *in forma pauperis*. (Doc. 70, 71.)

Generally, motions to reconsider are appropriate only if the Court “(1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law.” School Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993). A motion for reconsideration should not be used to ask a court “to rethink what the court had already thought through, rightly or wrongly.” Above the Belt, Inc. v. Mel Bohannon Roofing, Inc., 99 F.R.D. 99, 101 (E.D. Va. 1983)). Rather, such arguments should be directed to the court of appeals. Sullivan v. Faras-RLS Group, Ltd., 795 F. Supp. 305, 309 (D. Ariz. 1992).

1 In its July 25, 2011 Order, the Court informed Plaintiff of the following:

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

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

12 (Doc. 9 at 1-2.)

13 Because Plaintiff failed to use this District's approved form or to provide the  
14 statutorily-required information, the Court denied Plaintiff's motion to proceed *in forma*  
15 *pauperis*, but granted him 30 days in which to either pay the \$350.00 filing fee or file an  
16 Application to Proceed *In Forma Pauperis* using the court-approved form. (*Id.*) The Court  
17 explicitly informed Plaintiff that the failure to either pay the \$350.00 filing fee or to file an  
18 Application to Proceed *In Forma Pauperis* using the court-approved form would result in the  
19 dismissal of this case without prejudice. (*Id.*)

20 Plaintiff neither paid the filing fee nor submitted the court-approved form *in forma*  
21 *pauperis* application for use by inmates. Instead, on September 14, 2011, Plaintiff filed a  
22 document captioned "Judicial Notice" in which he asserted that the "appropriate officer of  
23 the Lake County Jail would not sign the *in forma pauperis* form" and jail policy prevented  
24 inmates from making photocopies.<sup>1</sup> (Doc. 52.) As the Court stated in its Order dismissing  
25 this case,

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27 <sup>1</sup> Plaintiff was subsequently transferred to the Dixon Correctional Center in Dixon,  
28 Illinois. (Doc. 67.)

1 Even assuming jail officials refused to provide a six month inmate account  
2 statement or to complete the account certification, Plaintiff has failed to  
3 complete and file his portion of this District's approved *in forma pauperis*  
4 application. Plaintiff's contention that jail officials refuse to allow inmates to  
5 make photocopies is not credible in light of Plaintiff's voluminous filings in  
6 this, and other, cases while incarcerated. Because Plaintiff has failed to pay  
7 the filing fee or to file an Application to Proceed *In Forma Pauperis* on this  
8 District's approved form, the Court will dismiss this action without prejudice  
9 . . . .

6 (Doc. 63 at 6.)

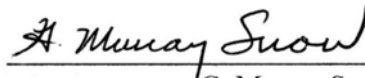
7 Plaintiff has not alleged or shown that the Court clearly erred or that dismissal was  
8 manifestly unjust. Further, he has not presented newly discovered evidence or cited an  
9 intervening change in controlling law. Moreover, although Plaintiff filed another motion to  
10 proceed *in forma pauperis*, including a partially complete court-approved *in forma pauperis*  
11 application, Plaintiff failed to have prison officials certify the amount in his inmate account  
12 or to submit an inmate trust account statement from prison officials. In short, even if the  
13 Court were inclined to grant reconsideration, Plaintiff has not submitted a properly completed  
14 *in forma pauperis* application by a prisoner. Under these circumstances, both of Plaintiff's  
15 motions will be denied.

16 **IT IS ORDERED:**

17 (1) Plaintiff's motions for reconsideration and to proceed *in forma pauperis* are  
18 **denied.** (Doc. 70, 71.)

19 (2) The docket shall reflect that the Court certifies, pursuant to 28 U.S.C.  
20 § 1915(a)(3) and Federal Rules of Appellate Procedure 24(a)(3)(A), that any appeal of this  
21 decision would not be taken in good faith.

22 DATED this 3rd day of January, 2012.

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25 \_\_\_\_\_  
26 G. Murray Snow  
27 United States District Judge  
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