

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

KM

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

Bryan Mornyngstarr Bernard,

Plaintiff,

vs.

Yuma County Sheriff's Office,

Defendant.

No. CV 12-1829-PHX-GMS (DKD)

ORDER

Plaintiff Bryan Mornyngstarr Bernard, who is confined in the Yuma County Detention Center, filed a *pro se* Complaint. Plaintiff did not paid the filing fee or file an Application to Proceed *In Forma Pauperis*.

In an October 9, 2012 Order, the Court granted Plaintiff 30 days to: (1) pay the filing fee or file a complete Application to Proceed *In Forma Pauperis*; **and** (2) file an amended complaint on the court-approved form

On October 25, 2012, Plaintiff filed a First Amended Complaint (Doc. 11). To date, Plaintiff has not paid the filing fee or filed an Application to Proceed *In Forma Pauperis* and certified six-month trust account statement. The Court will grant Plaintiff an additional 30 days to pay the filing fee or file a complete 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

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

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

15 **II. Failure to Comply With Statute**

16 Plaintiff has not paid the filing fee or filed an Application to Proceed *In Forma*
17 *Pauperis*. Plaintiff will be permitted 30 days to either pay the \$350.00 filing fee or file a
18 complete Application to Proceed *In Forma Pauperis* **and certified six-month trust account**
19 **statement.**

20 **III. Warnings**

21 **A. Address Changes**

22 Plaintiff must file and serve a notice of a change of address in accordance with Rule
23 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
24 relief with a notice of change of address. Failure to comply may result in dismissal of this
25 action.

26 **B. Copies**

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

1 to Plaintiff.

2 **C. Possible Dismissal**

3 If Plaintiff fails to timely comply with every provision of this Order, including these
4 warnings, the Court may dismiss this action without further notice. See *Ferdik v. Bonzelet*,
5 963 F.2d 1258, 1260-61(9th Cir. 1992) (a district court may dismiss an action for failure to
6 comply with any order of the Court).

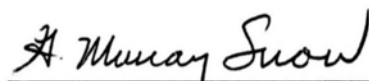
7 **IT IS ORDERED:**

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

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

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

16 DATED this 30th day of November, 2012.

17
18 
19 _____
20 G. Murray Snow
21 United States District Judge
22
23
24
25
26
27
28