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

Scott Steven Messer,
Plaintiff,

vs.

Officer Filley, et al.,

Defendants.

No. CV 13-1254-PHX-RCB (DKD)

ORDER

Scott Steven Messer, who is confined in the Arizona State Prison Complex, SMU I, in Florence, Arizona, has filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983. Plaintiff did not pay the \$350.00 civil action filing fee and \$50.00 administrative fee¹ or file an Application to Proceed *In Forma Pauperis*. The Court will give Plaintiff 30 days to pay the filing and administrative fees 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 and a \$50.00 administrative fee in a lump sum or, if granted the privilege of proceeding *in*

¹ Effective May 1, 2013, the Clerks of Court for the United States District Courts are required to collect a \$50.00 administrative fee for the filing of a civil action, suit, or proceeding in a district court. See Judicial Conference Schedule of Fees, District Court Miscellaneous Fee Schedule ¶14 (effective May 1, 2013), foll. 28 U.S.C. § 1914. However, the administrative fee “does not apply to applications for a writ of habeas corpus or to persons granted *in forma pauperis* status under 28 U.S.C. § 1915.” *Id.*

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

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
10 monthly balance in Plaintiff's account, whichever is greater. 28 U.S.C. § 1915(b)(1). An
11 initial partial filing fee will only be collected when funds exist. 28 U.S.C. § 1915(b)(4).
12 The balance of the \$350.00 filing fee will be collected in monthly payments of 20% of
13 the preceding month's income credited to an inmate's account, each time the amount in
14 the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2).

15 Because Plaintiff has not paid the \$400.00 filing and administrative fees or filed an
16 Application to Proceed *In Forma Pauperis*, Plaintiff will be permitted 30 days from the
17 filing date of this Order to submit a properly executed and certified Application to
18 Proceed *In Forma Pauperis*, using the form included with this Order, or pay the \$400.00
19 filing and administrative fees.

20 **II. Warnings**

21 **A. Address Changes**

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

26 **B. Copies**

27 Because Plaintiff is currently confined in ASPC-Eyman and this case is subject to
28 General Order 13-11, Plaintiff is not required to submit an additional copy of every filing

1 for use by the Court, as would ordinarily be required by Local Rule of Civil Procedure
2 5.4. If Plaintiff is transferred to a prison other than ASPC-Eyman, he will be notified of
3 the requirements regarding copies for the Court that are required for inmates whose cases
4 are not subject to General Order 13-11.

5 **C. Possible Dismissal**

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

10 **IT IS ORDERED:**

11 (1) Within 30 days of the date this Order is filed, Plaintiff must either pay the
12 \$400.00 filing and administrative fees **or** file a complete Application to Proceed *In*
13 *Forma Pauperis* and a certified six-month trust account statement.

14 (2) If Plaintiff fails to either pay the \$400.00 filing and administrative fees or
15 file a complete Application to Proceed *In Forma Pauperis* within 30 days, the Clerk of
16 Court must enter a judgment of dismissal of this action without prejudice and without
17 further notice to Plaintiff.

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

20 DATED this 21st day of October, 2013.

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24 Robert C. Broomfield
25 Senior United States District Judge
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**Instructions for Prisoners Applying for Leave to Proceed *in Forma Pauperis*
Pursuant to 28 U.S.C. § 1915 in a Civil Action (Non-habeas) in Federal Court**

You must pay the \$350.00 filing fee plus the \$50.00 administrative fees for a civil action. If you later file an appeal, you will be obligated to pay the \$455.00 filing fee for the appeal.

If you have enough money to pay the full \$400.00 filing and administrative fees, you should send a cashier's check or money order payable to the Clerk of the Court with your complaint.

If you do not have enough money to pay the full \$400.00 filing and administrative fees, you can file the action without prepaying the fees. However, the court will assess an initial partial filing fee. The initial partial filing fee will be the greater of 20% of the average monthly deposits or 20% of the average monthly balance in your prison or jail account for the six months immediately preceding the filing of the lawsuit. The court will order the agency that has custody of you to withdraw the initial partial filing fee from your prison or jail account as soon as funds are available and to forward the money to the court.

After the initial partial filing fee has been paid, you will owe the balance of the \$350.00 filing fee (you will not be required to pay the \$50.00 administrative fee). Until the filing fee is paid in full, each month you will owe 20% of your preceding month's income. The agency that holds you in custody will collect that money and forward it to the court any time the amount in your account exceeds \$10.00. The balance of the filing fee may be collected even if the action is later dismissed, summary judgment is granted against you, or you fail to prevail at trial.

To file an action without prepaying the filing fee, and to proceed with an action *in forma pauperis*, you must complete the attached form and return it to the court with your complaint. You must have a prison or jail official complete the certificate on the bottom of the form and attach a certified copy of your prison or jail account statement for the last six months. If you were incarcerated in a different institution during any part of the past six months, you must attach a certificate and a certified copy of your account statement from each institution at which you were confined. If you submit an incomplete form or do not submit a prison or jail account statement with the form, your request to proceed *in forma pauperis* will be denied.

Even if some or all of the filing fee has been paid, the court is required to dismiss your action if: (1) your allegation of poverty is untrue; (2) the action is frivolous or malicious; (3) your complaint does not state a claim upon which relief can be granted; or (4) your complaint makes a claim against a defendant for money damages and that defendant is immune from liability for money damages.

If you file more than three actions or appeals which are dismissed as frivolous or malicious or for failure to state a claim on which relief can be granted, you will be prohibited from filing any other action *in forma pauperis* unless you are in imminent danger of serious physical injury.

4. Do you have any other sources of income, savings, or assets either inside or outside of the institution where you are confined? Yes No
If "Yes," state the sources and amounts of the income, savings, or assets. _____

I declare under penalty of perjury that the above information is true and correct.

DATE

SIGNATURE OF APPLICANT

CONSENT TO COLLECTION OF FEES FROM TRUST ACCOUNT

I, _____, hereby consent to having the designated correctional officials at this institution release to the Court my trust account information. I further consent to having the designated correctional officials at this institution withdraw from my trust account the funds required to comply with the order of this Court for the payment of filing fees in accordance with 28 U.S.C. § 1915(b).

My consent includes withdrawal from my account by correctional officials of partial initial payments to this Court equal to 20% of the greater of:

- (A) the average monthly deposits to my account for the six-month period preceding my filing of this action, or
- (B) the average monthly balance in my account for the six-month period preceding my filing of this action.

My consent also includes monthly withdrawals from my account by correctional officials of an amount equal to 20% of each month's income. Whenever the amount in my account reaches \$10.00, correctional officials will withdraw that amount and forward it to the Court until the required filing fee is paid in full. I understand that I am liable for paying the entire fee, even if my case is dismissed by the Court before the fee is fully paid.

DATE

SIGNATURE OF APPLICANT

CERTIFICATE OF CORRECTIONAL OFFICIAL AS TO STATUS OF APPLICANT'S TRUST ACCOUNT

I, _____, certify that as of the date applicant signed this application:
(Printed name of official)

The applicant's trust account balance at this institution is: \$ _____
The applicant's average monthly deposits during the prior six months is: \$ _____
The applicant's average monthly balance during the prior six months is: \$ _____
The attached certified account statement accurately reflects the status of the applicant's account.

DATE

AUTHORIZED SIGNATURE

TITLE/ID NUMBER

INSTITUTION