

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

KENNETH L. FRANKLIN

PLAINTIFF

v.

NO. 4:07-CV-00561 GTE

**SOUTHERN ARKANSAS UNIVERSITY,
DR. RANKIN, as President; STATE OF
ARKANSAS; GOVERNOR MIKE BEEBE**

DEFENDANTS

ORDER

Before the Court is the *pro se* Plaintiff's Application to Proceed *In Forma Pauperis*. Plaintiff has failed to include the required form (AO 240) providing information regarding his financial status. The Court can not grant Plaintiff permission to proceed without paying the filing fee until Plaintiff completes the form AO 240 and returns it to the Court.

Additionally, the Court notes that the facts alleged do not appear to state a cause of action against the State of Arkansas or Governor Mike Beebe. If Plaintiff intends to pursue a cause of action against the State of Arkansas and Mike Beebe, then he shall state the facts supporting his claims against these two Defendants. Specifically, Plaintiff is directed to identify what these Defendants did or did not do that justifies imposing legal liability upon them.

Finally, Plaintiff is hereby given notice that as a general proposition, the State of Arkansas is immune from suit. Well established constitutional principles prohibit states from being named as defendants in federal court proceedings without their consent or a specific abrogation of sovereign immunity. *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 116 S.Ct. 1114, 1122, 134 L.Ed.2d 252 (1996). If the Defendant wishes to pursue a claim against the State of Arkansas, then he shall indicate why such suit does not violate the Eleventh Amendment to the United States Constitution. Unless the Defendant can establish a basis for avoiding the requirements of the Eleventh Amendment, then his claims against the State of Arkansas will be dismissed as frivolous.

The Eleventh Amendment also prohibits the recovery of money damages for claims against state officials in their official capacity. The Eleventh Amendment does not bar prospective injunctive relief or declaratory relief against state officials in their official capacities. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 66, 109 S.Ct. 2304 (1989)(state officials sued in their official capacities for injunctive relief are "persons" under section 1983 because official-capacity actions for prospective relief are not treated as actions against the state). Thus, Plaintiff is directed to state whether he intends to pursue claims against Dr. Rankin and Governor Beebe for money damages (requires suit against them in their individual capacity), injunctive relief (requires suit against them in their official capacity), or both.

For the reasons herein stated,

IT IS HEREBY ORDERED THAT Plaintiff's Application to Proceed *In Forma Pauperis* be, and it is hereby, held in abeyance pending the Plaintiff's completion and filing of form AO 240, a copy of which is being provided to Plaintiff with this Order. Plaintiff is further directed to provide the additional information to clarify his claims requested by the Court. **Plaintiff shall comply with this Order not later than Monday, July 1, 2007.**

IT IS SO ORDERED this 12th day of June, 2007.


UNITED STATES DISTRICT JUDGE

IMPORTANT NOTICE

RE: AO 240 and Privacy Policy Redaction Requirements

The Judicial Conference Privacy Policy regarding remote public electronic access to civil case files requires those filing documents to redact certain personal identifiers from documents before they are filed with the court. Social Security and financial account numbers are to be redacted to the last four digits. The names of minor children are to be redacted to the initials, and dates of birth are to be redacted to the year. (*JCUS-Sep/Oct 01*, p. 49.)

Please be aware that this redaction requirement may impact the way in which the Application to Proceed Without Prepayment of Fees and Affidavit (AO 240) is completed. Question five of this form requests the following information: (1) persons dependant upon the applicant for support, (2) relationship of this person to the applicant, and (3) amount of support. Most often, minor children will be included in responding to this question. In order to comply with the privacy policy, only the initials of the minor should be on the form. Listing the age of the minor is acceptable; however, only the year of birth may be included. Pro se filers are responsible for completing the application in compliance with the privacy policy. The Clerk will not review each filing for redaction.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF ARKANSAS

**APPLICATION TO PROCEED
WITHOUT PREPAYMENT OF
FEES AND AFFIDAVIT**

Plaintiff

v.

CASE

Defendant

I, _____ declare that I am the (check appropriate box)

petitioner/plaintiff/movant other

in the above-entitled proceeding; that in support of my request to proceed without being required to prepay fees, cost or give security therefor, I state that because of my poverty, I am unable to pay the costs of said proceeding or give security therefor; that I believe I am entitled to relief. The nature of my action, defense, or other proceeding or the issues I intend to present on appeal are briefly stated as follows:

In support of this application, I answer the following questions under penalty of perjury:

1. Are you currently employed? Yes No
- a. If the answer is "Yes," state the amount of your take-home salary or wages and pay period and give the name and address of your employer.
- b. If the answer is "No," state the date of your last employment, the amount of your take-home salary or wages and pay period and the name and address of your last employer.
2. In the past 12 twelve months have you received any money from any of the following sources?
- | | | |
|---|------------------------------|-----------------------------|
| a. Business, profession or other self-employment | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| b. Rent payments, interest or dividends | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| c. Pensions, annuities or life insurance payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| d. Disability or worker's compensation payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| e. Gifts or inheritances | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| f. Any other sources | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If the answer to any of the above is "Yes," describe, on the following page, each source of money and state the amount received and what you expect you will continue to receive.

3. Do you have **any** cash or checking or savings accounts? Yes No

If "Yes," state the total amount. _____

4. Do you own any real estate, stocks, bonds, securities, other financial instruments, automobiles or any other thing of value? Yes No

If "Yes," describe the property and state its value.

5. List the persons who are dependent on you for support, state your relationship to each person and indicate how much you contribute to their support.

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

_____ Date

_____ Signature of Applicant

ORDER OF COURT

The application is hereby denied.

U.S. District Judge
or Magistrate Judge

Date

The application is hereby granted. Let the applicant proceed without prepayment of cost or fees or the necessity of giving security therefor.

U.S. District Judge
or Magistrate Judge

Date