

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

TAVARUS MONTGOMERY
ADC #134297

PLAINTIFF

V.

NO: 4:09CV00666 JMM

JERRY G. JONES *et al.*

DEFENDANTS

ORDER

Plaintiff, currently held at the East Arkansas Regional Unit of the Arkansas Department of Correction, filed this *pro se* complaint (docket entry #1), pursuant to 42 U.S.C. § 1983, on August 10, 2009. Plaintiff did not submit the \$350.00 statutory filing fee or an application for leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a).

Under the Prison Litigation Reform Act of 1995, a prisoner who is permitted to file a civil action *in forma pauperis* still must pay the full statutory filing fee of \$350.00. 28 U.S.C. §1915(b)(1). The only question is whether a prisoner will pay the entire filing fee at the initiation of the proceeding or in installments over a period of time. *Ashley v. Dilworth*, 147 F.3d 715, 716 (8th Cir. 1998). Even if a prisoner is without assets and unable to pay an initial filing fee, he will be allowed to proceed with his claims and the filing fee will be collected by the Court in installments from the prisoner's inmate trust account. 28 U.S.C. § 1915(b)(4).

If the prisoner's case is subsequently dismissed for any reason, including a determination that it is frivolous, malicious, fails to state a claim, or seeks monetary relief against a defendant who is immune from such relief, the full amount of the \$350.00 filing fee will be collected and no portion of this filing fee will be refunded to the prisoner.

So that the Court can determine how the \$350.00 filing fee will be paid, Plaintiff is required

to submit, within thirty (30) days of this order's entry date, either the full statutory filing fee, or a properly completed application for leave to proceed *in forma pauperis*, along with a calculation sheet and certificate signed by an authorized official. Based on this information, the Court will assess an initial partial filing fee if sufficient funds exist, and will also direct the future collection of monthly installment payments from Plaintiff's account until the filing fee is paid in full. *Id.* 1915(b)(1) and (2). However, no prisoner will be prohibited from bringing a civil action because he "has no assets and no means by which to pay the initial partial filing fee." *Id.* 1915(b)(4).

IT IS THEREFORE ORDERED THAT:

1. The Clerk is directed to forward an *in forma pauperis* application, calculation sheet, and certificate, to Plaintiff.
2. Plaintiff is directed to submit, no later than thirty (30) days after the entry of this order, either the \$350.00 statutory filing fee, or to complete and sign the *in forma pauperis* application, and submit it to the Court, along with an inmate trust fund calculation sheet and certificate signed by an authorized official. Plaintiff's failure to do so will result in the recommended dismissal of his complaint.
3. Service is not appropriate for Defendants at this time.

DATED this 12th day of August, 2009.


UNITED STATES DISTRICT JUDGE