

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-00945-BNB

WILLIAM GIVENS,

Plaintiff,

v.

JAMES LANDER,
JACKIE JONES, and
GARY TORREZ,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

MAY 21 2009

GREGORY C. LANGHAM
CLERK

ORDER GRANTING PLAINTIFF LEAVE TO PROCEED
PURSUANT TO 28 U.S.C. § 1915
WITHOUT PAYMENT OF INITIAL PARTIAL FILING FEE

Plaintiff, William Givens, a prisoner in the custody of the Colorado Department of Corrections and currently is incarcerated at the correctional facility in Buena Vista, Colorado. He has filed *pro se* a Prisoner Complaint pursuant to 42 U.S.C. § 1983, among other statutes. He also has filed a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915.

Plaintiff will be granted leave to proceed pursuant to 28 U.S.C. § 1915. Based upon the information about Mr. Givens' financial status, the court finds that he is unable to pay an initial partial filing fee pursuant to § 1915(b)(1).

Title 28 U.S.C. § 1915 requires a prisoner bringing a civil action "to pay the full amount of a filing fee." 28 U.S.C. § 1915(b)(1). If a prisoner is unable to afford the full amount of the filing fee when the case is filed, the statute provides for payment of the filing fee through an initial partial filing fee and monthly installments of the balance until

the full filing fee is paid. However, "[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee." 28 U.S.C. § 1915(b)(4).

Because Mr. Givens' 28 U.S.C. § 1915 motion and certified trust fund account statement indicate that he has insufficient funds in his inmate account to pay an initial partial filing fee and that he has no other assets, Mr. Givens may proceed in this action without payment of an initial partial filing fee. The court will proceed to review the plaintiff's amended complaint pursuant to 28 U.S.C. § 1915 (e)(2)(B) to determine whether it is frivolous or malicious, or seeks monetary relief against a defendant who is immune from such relief. However, although he need not pay an initial partial filing fee, Mr. Givens remains obligated to pay the required \$350.00 filing fee through monthly installments as directed in this order. Accordingly, it is

ORDERED that the plaintiff is granted leave to proceed pursuant to 28 U.S.C. § 1915. It is

FURTHER ORDERED that Mr. Givens may proceed in this action without payment of an initial partial filing fee. Mr. Givens remains obligated to pay the full amount of the required \$350.00 filing fee pursuant to 28 U.S.C. § 1915(b)(1). It is

FURTHER ORDERED that, until the \$350.00 filing fee is paid in full, Mr. Givens shall make monthly payments to the court of twenty (20) percent of the preceding month's income credited to his account or show cause why he has no assets and no means by which to make each monthly payment. Mr. Givens is directed to make the necessary arrangements to have the monthly payments identified by the civil action

number on this order. In order to show cause, the plaintiff must file a current certified copy of his trust fund account statement. It is

FURTHER ORDERED that if Mr. Givens fails to have the appropriate monthly payment sent to the clerk of the court each month or to show cause each month as directed above why he has no assets and no means by which to make the monthly payment, the Prisoner Complaint will be dismissed without prejudice and without further notice. It is

FURTHER ORDERED that process shall not issue until further order of the court. It is

FURTHER ORDERED that the court may dismiss this action and may apply all or part of the filing fee payments tendered in this action to satisfy any filing fee debt the plaintiff may owe in a prior action or actions if the plaintiff fails to stay current with his payment obligations in the prior action or actions.

DATED May 21, 2009, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 09-cv-00945-BNB

William Givens
Prisoner No. 85941
Buena Vista Corr. Facility
PO Box 2017 - Unit South
Buena Vista, CO 81211

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 5/21/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk