

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-02764-BNB

JAMES FAIRCLOTH,

Plaintiff,

v.

CELIA SCHWARTZ,
WARDEN J. DAVIS,
MAJOR D. COTTEN,
CAPT. R. FISHER,
LT. A. HYSJULIEN, and
OTHER KNOWN AND UNKNOWN C.D.O.C. EMPLOYEE(S),

Defendants.

ORDER GRANTING 28 U.S.C. § 1915 MOTION
WITHOUT PAYMENT OF INITIAL PARTIAL FILING FEE

Plaintiff is a prisoner in the custody of the Colorado Department of Corrections. Plaintiff has filed *pro se* a Prisoner Complaint and he has filed two motions seeking leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. The certified copy of Plaintiff's inmate trust fund account statement submitted on November 21, 2012, in support of the motions seeking leave to proceed *in forma pauperis* indicates Plaintiff has had a negative balance in his account for the entire six-month period preceding the filing of this action. Plaintiff will be granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Based on the information about his financial status, the court finds that Plaintiff 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).

Plaintiff may proceed in this action without payment of an initial partial filing fee. However, although he need not pay an initial partial filing fee, Plaintiff remains obligated to pay the required \$350.00 filing fee through monthly installments as directed in this order. Accordingly, it is

ORDERED that the amended Prisoner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 13) is GRANTED. It is

FURTHER ORDERED that the Prisoner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 5) is DENIED as moot. It is

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

FURTHER ORDERED that, until the \$350.00 filing fee is paid in full, Plaintiff 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. Plaintiff 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, Plaintiff must file a current certified copy of his trust fund account statement. It is

FURTHER ORDERED that if Plaintiff 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 complaint may be dismissed without prejudice and without further notice.

It is

FURTHER ORDERED that process shall not issue at this time and the motion for service (ECF No. 15) is DENIED as premature.

DATED December 7, 2012, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge