

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

Civil Action No. 15-cv-00405-NYW

BILLY F. MAY,

Plaintiff,

v.

JUAN SEGOVIA, and
FRANKIE CORDOVA,

Defendants.

**ORDER DISCHARGING ORDER TO SHOW CAUSE AND DIRECTING MR. MAY TO
EITHER FILE RENEWED MOTION TO PROCEED *IN FORMA PAUPERIS* OR PAY
REMAINDER OF FILING FEE IN FULL**

Magistrate Judge Nina Y. Wang

Pursuant to 28 U.S.C. § 636(c) and the Order of Reference dated June 3, 2015 [#25], this action is assigned to the Magistrate Judge for all matters, including disposition. On January 21, 2016, this court issued an Order Directing Payment or to Show Cause (“Order to Show Cause”). [#43]. The court issued the Order to Show Cause to address whether Plaintiff Billy May had paid the initial partial filing fee of \$42.00, as ordered by the court in its Order Granting Leave to Proceed Pursuant to 28 U.S.C. § 1915, and had made any subsequent payment toward the complete \$350 filing fee. *See* [#6].

BACKGROUND

As previously explained in the Order to Show Cause, Plaintiff Billy F. May (“Plaintiff” or “Mr. May”) filed his Complaint in this action on February 27, 2015. [#1]. At the time of

filing, Mr. May was incarcerated at the Federal Prison Camp (“FPC”) in Florence, Colorado. [#1 at 1]. Soon after he filed the Complaint, Mr. May filed a Motion and Affidavit seeking relief to proceed *in forma pauperis* (“IFP”). [#5]. On March 17, 2015, the court granted Mr. May’s request (the “IFP Order”). [#6]. The court’s IFP Order expressly provided that “Plaintiff’s custodian shall disburse from Plaintiff’s prison account, if funds are available in keeping with 28 U.S.C. § 1915(b), an initial partial filing fee of \$42.00 to the Clerk of the United States District Court for the District of Colorado,” and “that after payment of the initial partial filing fee Plaintiff’s custodian shall disburse from Plaintiff’s prison account monthly payments of 20 percent of the preceding month’s income credited to this prison account until Plaintiff has paid the total filing fee of \$350.” [#6 at 2]. The IFP Order also expressly warned that “[i]nterference by Plaintiff in the submission of these funds shall result in the dismissal of this action.” [#6 at 2].

Prior to the Order to Show Cause, the docket did not reflect that Mr. May made the initial partial filing fee of \$42 or that he made any payments of any amount toward the \$350 filing fee. Nor did the docket reflect that Mr. May has filed any documents to show cause why he could not do so. The court also noted that Mr. May has moved outside the state of Colorado and currently resides in Burnet, Texas. *See* [#40]. Accordingly, the Court entered the Order to Show Cause to address the issue of non-payment of filing fees.

Mr. May responded to the Order to Show Cause on February 1, 2016. [#50]. Mr. May stated that he signed a release for the court to allow the Bureau of Prisons (“BOP”) to withdraw monthly payments in the amount of \$42.00 toward the complete \$350 filing fee. However, he stated that the BOP never withdrew those payments. Mr. May also attached a receipt showing

that he paid the \$42.00 installment ordered by the court toward the filing fee on February 1, 2016. *See* [#50-1]. Mr. May stated that he would like to continue to make monthly payments in the amount of \$42.00 until he reaches the \$350 total filing fee, or if that is not satisfactory, he will send the remainder in full. [#50 at 1].

As previously explained in the Order to Show Cause, in a case where the plaintiff was not incarcerated at the time of filing, but was incarcerated by the time of appeal, the Tenth Circuit held that upon release and in the absence of bad faith, a district court “should exercise its discretion to determine the amount of the outstanding fee obligation” if any incurred “prior to [the prisoner]’s release from prison,” and “terms pursuant” to which the released prisoner may pay any remaining obligation. *Brown v. Eppler*, 725 F.3d 1221, 1231 (10th Cir. 2013). In an unpublished disposition, a panel of the Tenth Circuit subsequently applied the reasoning of *Brown* to a plaintiff who was incarcerated at the time of filing but was then subsequently released, like Mr. May. In doing so, it found that the PLRA applied to that plaintiff from the time he filed his action until the time he was released. *See Dreismeier v. Werholtz*, 533 F. App’x 817, 820 (10th Cir. 2013) (unpublished). This court accordingly concluded that the PLRA applied to Mr. May from the time he initiated this action until he was released in 2015, and because neither the partial filing fee nor the monthly payments had been paid, there was an outstanding obligation. *Id.*

The court is satisfied that Mr. May has appropriately responded to the Order to Show Cause. Mr. May paid the \$42.00 initial fee and provided an explanation for why the monthly payments were not made. Mr. May has also proposed a plan for making monthly payments from this point forward to satisfy his outstanding payment obligation. The court notes that Mr. May’s

failure to pay his fees to date does not appear to be based on any bad-faith conduct on his part. The court accordingly discharges the Order to Show Cause and orders Mr. May to either file an amended motion for leave to proceed *in forma pauperis* which if granted will allow the court to assess his current financial situation and set an appropriate monthly payment amount for him to pay until he satisfies the \$350 filing fee. If Mr. May does not file an amended motion for leave to proceed *in forma pauperis* by the deadline provided by the court, Mr. May is advised that the court will order him to pay the outstanding \$308 of his \$350 filing fee in full at that time.

CONCLUSION

For the reasons set forth herein, **IT IS HEREBY ORDERED** that:

- (1) The Order Directing Payment or to Show Cause [#43] is **DISCHARGED**;
- (2) On or before **February 28, 2016**, Mr. May shall either (a) file an amended motion for leave to proceed *in forma pauperis* or (b) pay the remaining \$308 of his \$350 filing fee.

DATED: February 4, 2016

BY THE COURT:

/s/ Nina Y. Wang
United States Magistrate Judge