

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

Civil Action No. 15-cv-01004-GPG

(The above civil action number must appear on all future papers sent to the court in this action. Failure to include this number may result in a delay in the consideration of your claims.)

JACOB DANIEL OAKLEY,

Plaintiff,

v.

SHARRON PHILLIPS, individual and official capacity,

Defendant.

ORDER GRANTING LEAVE TO PROCEED PURSUANT TO 28 U.S.C. § 1915

Plaintiff, a Colorado state prisoner, has submitted to the court *pro se* a Prisoner Complaint (ECF No. 1), a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 2), and a "Motion for Leave to Service of Process and Summons and Complaint and Service of Process and Summons of Complaint" (ECF No. 4). The Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 will be granted. Based on the information about Plaintiff's financial status, which indicates he has had a negative balance in his inmate account throughout the previous six months, 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 regardless of the outcome of this action. Plaintiff has consented to disbursement of partial payments of the filing fee from his inmate account. (See ECF No. 2 at 2.) Accordingly, it is

ORDERED that the Prisoner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 2) is granted. It is

FURTHER ORDERED that Plaintiff may proceed in this action without payment of an initial partial filing fee. It is

FURTHER ORDERED that Plaintiff’s custodian shall disburse from Plaintiff’s inmate account monthly payments of 20 percent of the preceding month’s income credited to this inmate account until Plaintiff has paid the total filing fee of \$350. See 28 U.S.C. §1915(b)(2). Interference by Plaintiff in the submission of these funds will result in the dismissal of this action. It is

FURTHER ORDERED that Plaintiff is advised that notwithstanding any filing fee, or any portion thereof, that may have been paid, the Court shall dismiss at any time all or any part of such complaint which (1) is frivolous or malicious; (2) fails to state a claim on which relief can be granted; or (3) seeks monetary relief from a defendant who is

immune from such relief. See 28 U.S.C. §1915(A)(b); 28 U.S.C. § 1915(e)(2). It is

FURTHER ORDERED that Plaintiff's custodian shall continue to disburse monthly payments from Plaintiff's inmate account until full payment of the filing fee has been paid to the Court, even after disposition of the case and regardless of whether relief is granted or denied. It is

FURTHER ORDERED that the "Motion for Leave to Service of Process and Summons and Complaint and Service of Process and Summons of Complaint" (ECF No. 4) is denied as premature and the Clerk of the Court shall not issue process until further order of the Court. It is

FURTHER ORDERED that the Clerk of the Court shall send a copy of this Order to DOC_inmateaccounts@state.co.us.

DATED May 13, 2015, at Denver, Colorado.

BY THE COURT:

s/ Gordon P. Gallagher
United States Magistrate Judge