

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

DANTE G. FREDERICK,)	
)	
Plaintiff,)	
)	
v.)	
)	CV416-310
F. BARRY WILKES, J. WILLIAMS,)	
)	
Defendants.)	

ORDER

Proceeding *pro se* and *in forma pauperis* (IFP), Dante Frederick has filed this civil rights case against defendants Wilkes and Williams, clerks for the Superior Court of Liberty County. Doc. 1. He alleges that they have refused to docket a civil action that he submitted for filing in that court. *Id.* His complaint is a mishmash of the Northern District's § 1983 form complaint and his own handwritten creation. *Id.*

The federal courts have long made available to jails and prisons specific forms for filing habeas and civil rights cases. In *Williams v. Freeseemann*, 2015 WL 6798946 at * 1 n. 4 (S.D. Ga. Oct. 15, 2015), this Court noted that some inmate-litigants bypass those forms in favor of

“home-brewed” filings. Adverse factors can motivate that effort. The Court’s forms force inmates to answer questions aimed at capturing things like 28 U.S.C. § 1915(g) strikes and repeat (*e.g.*, successive writ) habeas filings. *See, e.g., Bright v. Corizon Health Corp.*, 2015 WL 9257155 at * 1 (S.D. Ga. Dec. 18, 2015) (“Bright’s incentive to omit his prior case information is strong because of the § 1915(g) three-strike bar.”). “Home-brewers” typically omit those prophylactic questions from their filings.

Accordingly, plaintiff must resubmit his complaint on this Court’s form within thirty days of the date this Order is served. Plaintiff is therefore **ORDERED** to complete the attached **Form to be Used by Prisoners in Filing a Complaint Under the Civil Rights Act, 42 U.S.C. § 1983**, which requires that prisoner plaintiffs disclose: (1) whether they have brought other federal lawsuits while incarcerated, (2) whether they were allowed to proceed IFP in any such lawsuits, and (3) whether any such suit was dismissed on the ground that it was frivolous, malicious, or failed to state a claim.¹ **Failure to comply with**

¹ This Court’s § 1983 complaint form, which is availed to all prisons and jails, *see* <http://www.gasd.uscourts.gov/pdf/prisoner1983.pdf>, compels inmates to disclose prior lawsuits. That data is necessary to enforce the “Three Strikes” rule illuminated in

this order within thirty days from the date this Order is served will result in a recommendation that this case be dismissed.

Meanwhile, it is time for plaintiff to pay his fees. Frederick seeks leave to file his case *in forma pauperis* (IFP). Doc. 2. After reviewing his application, it appears plaintiff lacks sufficient resources to prepay the filing fee. Accordingly, the Court **GRANTS** his request to proceed IFP.

Plaintiff is hereby advised that the procedures for filing and litigating prisoner civil rights suits in federal court were significantly changed by the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321, enacted on April 26, 1996. The Act requires **all** prisoners, even those who are allowed to proceed IFP, to pay the full filing fee of \$350.00. 28 U.S.C. § 1915(b)(1). Prisoner litigants allowed to proceed IFP must pay an initial partial filing fee of 20 percent of the greater of the average monthly deposits to, or average monthly balance in, the

Owens v. Morales, 2015 WL 5040245 at * 1 (S.D. Ga. Aug. 25, 2015). See *Boney v. Hickey*, 2014 WL 4103918 at * 4-5 (S.D. Fla. Aug. 15, 2014) (collecting cases that discuss what constitutes a 28 U.S.C. § 1915(g) strike, three of which can lead to a substantial curtailment on an inmate's ability to proceed IFP).

Under the question concerning whether a prisoner plaintiff has brought any lawsuits in federal court dealing with the facts other than those involved in this action, plaintiff must specifically describe *each* such lawsuit, and if there is more than one such lawsuit, the additional lawsuits must be described on another piece of paper.

prisoner's account for the 6-month period immediately preceding the filing of the complaint. Prison officials are then required to collect the balance of the filing fee by deducting 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). This payment shall be forwarded to the Clerk of Court "each time the amount in plaintiff's account exceeds \$10 until the full filing fees are paid." *Id.* The entire filing fee must be paid even if the suit is dismissed at the outset because it is frivolous, malicious, fails to state a claim, or seeks monetary damages against a defendant who is immune from such relief.

In addition to requiring payment of the full filing fee, the Act now requires prisoners to exhaust all administrative remedies before challenging "prison conditions" in a civil action. 42 U.S.C. § 1997e; *see* 18 U.S.C. § 3626(g)(2). All prisoner civil rights actions filed after April 26, 1996 are subject to dismissal if the prisoner has not exhausted the available administrative remedies with respect to each claim asserted. Moreover, even if the complaint is dismissed for failure to exhaust, the prisoner will still be responsible for payment of the full filing fee.

The new law also provides that a prisoner cannot bring a new civil action or appeal a judgment in a civil action IFP if the prisoner has on

three or more prior occasions, while incarcerated, brought a civil action or appeal in federal court that was dismissed because it was frivolous, malicious, or failed to state a claim upon which relief may be granted. The only exception to this “three strikes” rule is if the prisoner is in “imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). Because of these changes in the law, the court will give plaintiff an opportunity, at this time, to voluntarily dismiss the complaint pursuant to Fed. R. Civ. P. 41(a)(1). Such a voluntary dismissal will not require plaintiff to pay the filing fee or count as a dismissal which may later subject plaintiff to the three-dismissal rule under section 1915(g).

IT IS HEREBY ORDERED that:

(1) Plaintiff must furnish the enclosed **Prisoner Trust Fund Account Statement** to the trust (financial) officer of each prison where he has been confined for the past six months. The trust officer will complete and sign the form and return the form and supporting documents to plaintiff for submission to the Court. Two copies of the form are enclosed for this purpose.

(2) Plaintiff must sign and date the enclosed **Consent to Collection of Fees from Trust Account**. By signing this form,

plaintiff gives his consent to the collection of the entire filing fee from his prison account in installments, in accordance with the provisions of the Prison Litigation Reform Act.

(3) Plaintiff must return both the **Prisoner Trust Account Statement** and the **Consent to Collection of Fees from Trust Account** to the Clerk within 30 days of this Order.

Once Frederick has complied with the conditions of this Order, the Court will review his complaint to determine which, if any, claims are viable and which, if any, defendants should be served with a copy of the complaint. If no response is timely received from plaintiff, the Court will presume that he desires to have this case voluntarily dismissed and will dismiss this action without prejudice.

The Clerk of Court is **DIRECTED** to serve along with a copy of this Order (1) a 42 U.S.C. § 1983 form complaint, (2) a Prisoner Trust Account Statement form, and (3) the Consent to Collection of Fees from Trust Account form. Plaintiff shall have thirty days from the service of this Order to fill out and return **all three forms**.

Failure to comply with this Order within thirty days will result in the dismissal of plaintiff's case, without prejudice.

SO ORDERED, this 1st day of December, 2016.

Handwritten signature of J.R. Smith in blue ink.

UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA