

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CHRISTOPHER RIDDLE #1,)	
ANGELITO C. MERCADO #2,)	
)	
Plaintiffs,)	
)	
v.)	No. 1:17-cv-03710TWP-MJD
)	
BARTHOLOMEW COUNTY,)	
MATT MYERS Sheriff,)	
MARTOCIA Major,)	
WEAVER Sgt.,)	
STILLABOWER Lt.,)	
REED Sgt.,)	
HOLDREITH Officer,)	
OFFICER BUTLER Officer,)	
FIPPEN Officer,)	
TOOLEY Officer,)	
GREENLY Officer,)	
MOORE Officer,)	
CLAYBURN Officer,)	
SEARLES Officer,)	
FOSTER Officer,)	
BOOTH Officer,)	
CROUCH Sgt.,)	
)	
Defendants.)	

Entry Discussing Motion for Leave to Proceed *in forma pauperis*

Plaintiffs Christopher Riddle (“Mr. Riddle”) and Angelito Mercado (“Mr. Mercado”), who are confined in the Bartholomew County Jail, filed a pro se civil rights Complaint alleging violations of due process and equal protection.

Mr. Riddle has filed an Application to Proceed *In Forma Pauperis*. Based on the trust account information provided by Mr. Riddle, were he proceeding as a single plaintiff, his motion would be granted and he would be assessed an initial partial filing fee.

Mr. Mercado has not filed an Application to Proceed *In Forma Pauperis* and has not paid the filing fee. He has previously “struck-out” under 28 U.S.C. § 1915 (g) and therefore is barred from requesting leave to proceed *in forma pauperis*. Mr. Mercado would therefore be liable for the entire Four Hundred Dollar (\$400.00) filing fee, were he proceeding as a single plaintiff. Because the plaintiffs have filed this action together, the Court must decide how to assess the filing fee among the two plaintiffs despite the disparity in their *in forma pauperis* status.

The Seventh Circuit Court of Appeals has held that pro se plaintiffs may join in one action, in compliance with Fed. R. Civ. P. 20, but they must each either be assessed the full filing fee or have their *in forma pauperis* status assessed individually. *Boriboune v. Berge*, 391 F.3d 852, 856 (7th Cir. 2004). This approach prevents “prisoners who have ‘struck out’ under § 1915(g) and thus must prepay all filing fees unless ‘under imminent danger of serious physical injury’ [from] tag[ing] along on a joint complaint.” *Id.* at 854 (internal citations omitted).

Given this requirement, and the risk under § 1915(g) that each plaintiff may be assessed “strikes” for frivolous claims brought by their co-plaintiff, the Seventh Circuit Court of Appeals has suggested that district courts give plaintiffs an opportunity to drop-out of litigation before fees, and potential “strikes”, are assessed. *Id.* at 856.

Mr. Riddle and Mr. Mercado are now on notice that, when filing complaints with other plaintiffs, each plaintiff will be assessed either the full filing fee or will have his *in forma pauperis* status assessed individually, and will be potentially liable for “strikes” based on the frivolous claims of his co-plaintiffs. In future litigation, “strikes” and fees may be assessed by the Court without warning or opportunity to opt-out.

Based on the discussion above, Mr. Riddle’s motion to proceed *in forma pauperis*, dkt [3], is **granted**. Mr. Riddle is assessed an initial partial filing fee of Forty Three Dollars and Fourteen

Cents (\$43.14). He shall have **through December 1, 2017**, in which to pay this sum to the clerk of the district court or to inform the Court of his desire to voluntarily withdraw his complaint and avoid assessment of the filing fee.

Mr. Mercado shall have **through December 1, 2017**, in which to pay the \$400.00 filing fee to the clerk of the district court or to inform the Court of his desire to voluntarily withdraw his complaint and avoid assessment of the filing fee.

IT IS SO ORDERED.

Date: 10/30/2017



TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

Distribution:

CHRISTOPHER RIDDLE
Bartholomew County Jail
543 2nd Street
Columbus, IN 47201

ANGELITO C. MERCADO
Bartholomew County Jail
543 2nd Street
Columbus, IN 47201

Financial Deputy Clerk