

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION**

NATHANIEL YANCEY,

Plaintiff,

vs.

TRACY DIETSCH, RANDY CASPERS,

Defendants.

No. C13-0106-LRR

ORDER

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The matter before the court is the plaintiff's application to proceed in forma pauperis (docket no. 1) and application for appointment of counsel (docket no. 2). The plaintiff filed both applications on October 10, 2013. Along with his applications, the plaintiff submitted a complaint pursuant to 42 U.S.C. § 1983.

Based on the plaintiff's application and certificate of inmate account, it is clear that the plaintiff does not have sufficient funds to pay the required filing fee. 28 U.S.C. § 1914(a) (requiring \$350.00 filing fee).<sup>1</sup> Thus, in forma pauperis status shall be granted to the plaintiff. *See generally* 28 U.S.C. § 1915. The clerk's office shall file the complaint without the prepayment of the filing fee. Although the court deemed it appropriate to grant the plaintiff in forma pauperis status, the plaintiff is required to pay the full \$350.00 filing fee by making payments on an installment basis. 28 U.S.C. §

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<sup>1</sup> The court notes that the plaintiff may be under the mistaken impression that the filing fee is \$150.00. At least since 2006, the filing fee has not been \$150.00. And, on April 9, 2006, the filing fee increased from \$250.00 to \$350.00. In the event that the plaintiff's desire to pursue this action is altered by the actual filing fee, the plaintiff may write to the court and ask that his action be dismissed. Upon receipt of the plaintiff's notice, the court will dismiss without prejudice the plaintiff's action.

1915(b)(1); *see also In re Tyler*, 110 F.3d 528, 529-30 (8th Cir. 1997) (“[T]he [Prisoner Litigation Reform Act] makes prisoners responsible for their filing fees the moment the prisoner brings a civil action or files an appeal.”). The full filing fee will be collected even if the court dismisses the case because it is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks money damages against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

Here, the plaintiff must pay an initial partial filing fee in the amount of 20 percent of the greater of his average monthly account balance or average monthly deposits for the six months preceding the filing of the complaint. 28 U.S.C. § 1915(b)(1). Based on the documents that the plaintiff included with his application to proceed in forma pauperis, the court finds that the initial partial filing fee is \$5.37. *Id.* The plaintiff shall submit \$5.37 by no later than December 20, 2013. *Id.* If the court does not receive payment by this deadline, the instant action shall be dismissed. *See Fed. R. Civ. P. 41(b)* (permitting dismissal where a plaintiff either fails to prosecute or fails to respond to an order of the court); *Hutchins v. A.G. Edwards & Sons*, 116 F.3d 1256, 1259-60 (8th Cir. 1997) (explaining court’s power to dismiss an action); *Edgington v. Missouri Dept. of Corrections*, 52 F.3d 777, 779-80 (8th Cir. 1995) (same), abrogated on other grounds by *Doe v. Cassel*, 403 F.3d 986, 989 (8th Cir. 2005). If necessary, the plaintiff may request in a written motion an extension of time to pay the initial partial filing fee.

In addition to the initial partial filing fee, the plaintiff must “make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account.” 28 U.S.C. § 1915(b)(2). The statute places the burden on the prisoner’s institution to collect the additional monthly payments and forward them to the court. Specifically,

[a]fter payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account. The agency having custody of the prisoner shall

forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

28 U.S.C. § 1915(b)(2). Therefore, after the plaintiff pays in full the initial partial filing fee, the remaining installments shall be collected by the institution having custody of the plaintiff. *Id.* The clerk's office shall send a copy of this order and the notice of collection of filing fee to the appropriate official at the place where the plaintiff is an inmate. The court shall reserve ruling on the plaintiff's claims for purposes of 28 U.S.C. § 1915(e)(2)(B) and/or 28 U.S.C. § 1915A.

Appointment of counsel is based on multiple factors, including the complexity of the case, and, although the court does appoint attorneys in actions that arise under 42 U.S.C. § 1983, it is not required to appoint an attorney. *See Phillips v. Jasper County Jail*, 437 F.3d 791, 794 (8th Cir. 2006); *see also Taylor v. Dickel*, 293 F.3d 427, 428 (8th Cir. 2002) (discussing 28 U.S.C. § 1915(e)(1)); *Davis v. Scott*, 94 F.3d 444, 447 (8th Cir. 1996) (setting forth factors to be considered for appointment of counsel in civil case); *Abdullah v. Gunter*, 949 F.2d 1032, 1035 (8th Cir. 1991) (same); *Wiggins v. Sargent*, 753 F.2d 663, 668 (8th Cir. 1985) (stating an indigent litigant enjoys neither a statutory nor a constitutional right to have counsel appointed in a civil case). Given the record in this action, the court does not believe that assistance of counsel is warranted at this time. The plaintiff's failure to protect claim is not complex, and it is at least questionable whether such claim is cognizable in light of the facts alleged, which appear to indicate that the plaintiff told the defendants that he was generally having issues with others and had not told them that he had been threatened by a particular individual and that a significant amount of time passed between when he complained to the defendants and when he was assaulted. *See, e.g., Prater v. Dahm*, 89 F.3d 538, 541-42 (8th Cir. 1996) (finding that a prisoner failed to show that a prison official "actually knew of the risk" to the prisoner when the prisoner told the official that he received threats from his roommate because, in

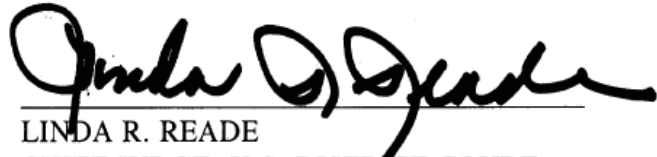
part, after reporting the threats, the prisoner and his roommate told the official that there would be no trouble and the two “were incarcerated together for a substantial period of time without incident”). Accordingly, the plaintiff’s application for appointment of counsel shall be denied.

**IT IS THEREFORE ORDERED:**

- 1) The plaintiff’s application to proceed in forma pauperis status (docket no. 1) is granted.
- 2) The clerk’s office is directed to file the complaint without the prepayment of the filing fee.
- 3) The plaintiff is directed to submit an initial partial filing fee of \$5.37 by no later than December 20, 2013. The instant action will be dismissed unless either the initial partial filing fee of \$5.37 is received by December 20, 2013 or the court grants an enlargement of time to pay the initial partial filing fee in response to a written motion.
- 4) After the plaintiff pays the initial partial filing fee, the institution having custody of the plaintiff is directed to collect and remit monthly payments in the manner set forth in 28 U.S.C. § 1915(b)(2). Until the \$350.00 filing fee is paid in full, the plaintiff is obligated to pay and the institution having custody of him is obligated to forward 20 percent of the preceding month’s income credited to his account each time the amount in the account exceeds \$10.00.
- 5) The clerk’s office is directed to send a copy of this order and the notice of collection of filing fee to the appropriate official at the place where the plaintiff is an inmate.
- 6) The court reserves ruling on the plaintiff’s claims for purposes of 28 U.S.C. § 1915(e)(2)(B) and/or 28 U.S.C. § 1915A.

7) The plaintiff's application for appointment of counsel (docket no. 2) is denied.

**DATED** this 20th day of November, 2013.

A handwritten signature in black ink, appearing to read "Linda R. Reade", written over a horizontal line.

LINDA R. READE  
CHIEF JUDGE, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF IOWA

**TO: WARDEN/ADMINISTRATOR**  
**Clarinda Correctional Facility, Clarinda, Iowa**

**NOTICE OF COLLECTION OF FILING FEE**

You are hereby given notice that Nathaniel Yancey, #6846190, an inmate at your facility, filed the following lawsuit in the United States District Court for the Northern District of Iowa: *Yancey v. Dietsch et al.*, Case No. C13-0106-LRR. The inmate was granted in forma pauperis status pursuant to 28 U.S.C. § 1915(b), which requires partial payments of the \$350.00 filing fee. Based on the inmate's account information, the court has assessed an initial partial filing fee of \$5.37, which the inmate must pay now to the clerk of court. 28 U.S.C. § 1915(b)(1).

After payment of the initial partial filing fee, the [inmate] shall be required to make monthly payments of 20 percent of the preceding month's income credited to [his] account. The agency having custody of the [inmate] shall forward payments from [his] account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

28 U.S.C. § 1915(b)(2). Therefore, you must monitor the account and send payments to the clerk of court according to the system provided in 28 U.S.C. § 1915(b)(2), that is, after the plaintiff pays the initial partial filing fee of \$5.00, you should begin making monthly payments of 20 percent of the preceding month's income credited to the inmate's account. Please make the appropriate arrangements to have these fees deducted and sent to the court as instructed.



Deputy Clerk

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Robert L. Phelps  
U.S. District Court Clerk  
Northern District of Iowa