

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

KEITH RUSSELL JUDD,

Plaintiff,

vs.

SECRETARY OF STATE OF IOWA and
STATE OF IOWA,

Defendants.

No. C11-4050-MWB

ORDER

This matter is before the court on the plaintiff's application to proceed in forma pauperis. The plaintiff submitted such application on May 27, 2011. Along with his application to proceed in forma pauperis, the plaintiff submitted a complaint pursuant to 42 U.S.C. § 1983. In addition, the plaintiff supplemented his complaint on June 9, 2011.

In 1996, Congress enacted the Prisoner Litigation Reform Act ("PLRA") to deter frivolous prisoner litigation. *Lyon v. Vande Krol*, 127 F.3d 763, 764 (8th Cir. 1997). The PLRA requires all prisoners to pay the filing fee for civil cases and differentiates among prisoners on method of payment. *See* 28 U.S.C. § 1914(a) (requiring filing fee); 28 U.S.C. § 1915 (explaining proceedings in forma pauperis). Prisoners who have not had three prior cases dismissed as frivolous need only pay a percentage of the fee at the outset and the remainder over time. 28 U.S.C. § 1915(b)(1)-(4). Such litigants will not be barred from pursuing a claim by inability to make the required payment. *Id.* In contrast, 28 U.S.C. § 1915(g), commonly referred to as the "three strikes" provision, states:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim

upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

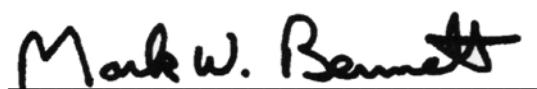
“The statute’s bar does not preclude the inmate from filing additional actions but does deny him the advantages of proceeding in forma pauperis.” *Martin v. Shelton*, 319 F.3d 1048, 1050 (8th Cir. 2003); *see also Higgins v. Carpenter*, 258 F.3d 797, 799-801 (8th Cir. 2001) (holding that the three strikes provision of 28 U.S.C. § 1915(g) is constitutional).

Prior to filing the instant action, the plaintiff filed at least three frivolous actions or appeals. *See, e.g., Judd v. FEC*, 311 Fed. App’x 730 (5th Cir. 2009); *Judd v. University of New Mexico*, 204 F.3d 1041 (10th Cir. 2000). In addition, it is clear from the statements that the plaintiff included in his complaint that he is not under imminent danger of serious physical injury. 28 U.S.C. § 1915(g). Accordingly, the plaintiff’s application to proceed in forma pauperis shall be denied, and this action shall be dismissed without prejudice. The clerk’s office shall file the complaint for the purpose of making a record.

IT IS THEREFORE ORDERED:

- 1) The plaintiff’s application to proceed in forma pauperis (docket no. 1) is denied.
- 2) The plaintiff’s action is dismissed without prejudice.
- 3) The clerk’s office is directed to file the plaintiff’s complaint for the purpose of making a record.

DATED this 7th day of July, 2011.



MARK W. BENNETT
U. S. DISTRICT COURT JUDGE
NORTHERN DISTRICT OF IOWA