

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

MICHAEL L. PELSOR, JR.,

Plaintiff,

v.

CASE NO. 17-3084-SAC-DJW

RENO COUNTY SHERIFF'S DEPARTMENT,

Defendant.

MEMORANDUM AND ORDER

This matter is a civil rights action filed under 42 U.S.C. § 1983 by a prisoner in state custody. On May 31, 2017, U.S. Magistrate Judge Waxse ordered plaintiff to submit an initial partial filing fee within fourteen days. Plaintiff was advised that the failure to submit the fee as directed might result in the dismissal of this matter without further notice. There has been no response to that order.

The failure to apply a filing fee as directed by a court is viewed as a failure to prosecute under Rule 41(b) of the Federal Rules of Civil Procedure. See *Scherer v. Kansas*, 263 Fed.Appx. 669 (10th Cir. 2008) (affirming dismissal of pro se party's action under § 1983 under Rule 41(b) due to plaintiff's failure to pay filing fee after warning that dismissal would be entered if he failed to comply).

Here, the initial partial filing fee was calculated under 28 U.S.C. § 1915(b)(2), and plaintiff was advised of both the opportunity to object and that dismissal might follow if he failed to respond. The Court concludes this matter may be dismissed under Rule 41(b).

IT IS, THEREFORE, BY THE COURT ORDERED this matter is dismissed without prejudice due to plaintiff's failure to submit the fee as directed.

IT IS SO ORDERED.

DATED: This 21st day of June, 2017, at Topeka, Kansas.

S/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge