

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

MARK HELSTROM,

Plaintiff,

v.

THE UNITED STATES OF AMERICA and
STATE OF KANSAS,

Defendants.

Case No. 23-cv-1250-EFM-GEB

MEMORANDUM AND ORDER

Before the Court is a Report and Recommendation (“R&R”) from Magistrate Judge Gwynne E. Birzer (Doc. 8). Pro se Plaintiff Mark Helstrom filed this action on November 22, 2023, seeking to challenge the constitutionality of filing fee requirements in both Kansas and federal courts. Plaintiff did not pay a filing fee. Along with his Complaint, Plaintiff filed a Motion for Leave to Proceed in forma pauperis (Doc. 2). However, he did not file a financial affidavit, as required for the Court to determine whether Plaintiff’s Motion may be granted.¹

On December 18, 2023, Judge Birzer ordered Plaintiff to file a financial affidavit in support of his Motion. Plaintiff refused. After giving Plaintiff more than enough time to comply with her order, Judge Birzer filed her R&R on July 22, 2024. In the R&R, Judge Birzer recommends denying Plaintiff’s Motion because he failed to file a financial affidavit. She also recommends dismissal of Plaintiff’s case for: (1) failure comply with her December 18, 2023, Order; (2) failure

¹ See 28 U.S.C. § 1915(a); D. Kan. Rule 9.1(g)(1).

to provide the financial information required by 28 U.S.C. § 1915(a) and D. Kan. Rule 9.1(g)(1) to proceed in this case without prepayment of the filing fee; and (3) failure to pay the filing fee as required by 28 U.S.C. § 1914.

After issuing her R&R, Judge Birzer instructed the parties that they had 14 days after being served with the R&R to file any objection. On July 29, 2024, Plaintiff phoned the clerk's office of this Court, informing them that he had received the R&R via mail, but he refused to open the envelope because:

Due to the violent tendencies of the United States Government, the Several States and their agencies, Mark can no longer accept any Government correspondence in paper form through the USPS or any other carrier, due to foreign substances that could be placed or claimed placed on the documents placing my life in DANGER! This government has shown time and time again that they cannot be trusted in any way shape or form. Any correspondence sent to Mark through USPS or any other carrier will be immediately refused, rejected or instantly disposed of without opening.²

The clerk's office then emailed him a copy of the R&R to the alternative email address he provided. He filed his self-titled "Response" on August 15, 2024. Instead of addressing the legal and procedural issues raised by Judge Birzer, Plaintiff complained of being labeled "pro se" and having his action described as a "lawsuit," before vigorously attempting to advocate the merits of his claim. He still has not submitted a financial affidavit or paid the filing fee.

Having reviewed both Judge Birzer's R&R and Plaintiff's Response, the Court is entirely in agreement with Judge Birzer and adopts her R&R in full. Plaintiff's Response does not address Judge Birzer's concerns. Because Plaintiff has failed to file a financial affidavit, his Motion must be denied. And because he did not pay a filing fee—and does not proceed in forma pauperis—his case must be dismissed without prejudice.

² This section was taken from Plaintiff's Response to Judge Birzer's R&R.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Proceed Without Prepayment of Fees (Doc. 2) is **DENIED** for failure to submit the required affidavit of financial status.

IT IS FURTHER ORDERED that the Notice and Report and Recommendation, DE 8, is granted and this case be **DISMISSED** without prejudice.

IT IS SO ORDERED.

Dated this 28th day of August, 2024.

A handwritten signature in black ink that reads "Eric F. Melgren". The signature is written in a cursive, flowing style.

ERIC F. MELGREN
CHIEF UNITED STATES DISTRICT JUDGE