

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT OWENSBORO**

**MICHAEL DALE HOWARD**

**PLAINTIFF**

**v.**

**CIVIL ACTION NO. 4:14-CV-P66-M**

**DAVID W. LAMAR et al.**

**DEFENDANTS**

**MEMORANDUM AND ORDER**

Plaintiff, Michael Dale Howard, initiated this action by filing a complaint and a prisoner application to proceed without prepayment of fees. The Court determined that Plaintiff was barred from proceeding without paying the filing fee under 28 U.S.C. § 1915(a) unless he can show that he is in imminent danger of serious physical injury. Therefore, the Court ordered Plaintiff to pay the filing fee within 30 days. He was warned that failure to comply would result in dismissal of this action and continued responsibility to pay the filing fee.

More than 30 days have passed since the Court entered its Order, and Plaintiff has not paid the filing fee.<sup>1</sup> Having failed to pay the \$400.00 filing fee as ordered by the Court, the Court will, by separate Order, dismiss this action pursuant to Fed. R. Civ. P. 41(b) for failure to comply with a prior Order of this Court and failure to prosecute.

Plaintiff remains obligated to pay the filing fee in full notwithstanding his failure to comply with the prior Order of this Court. *McGore v. Wrigglesworth*, 114 F.3d 601, 605 (6th Cir. 1997) (“We conclude that by *filing* the complaint or notice of appeal, the prisoner waives any objection to the fee assessment by the district court.”) (emphasis added), *overruled on other grounds by Jones v. Bock*, 549 U.S. 199 (2007).

---

<sup>1</sup> The Court did receive a letter from Plaintiff asking this Court to contact Chase Bank and have that bank send in the required payment. However, as this Court has informed Plaintiff in a previous case dismissed for failure to pay the fee, it is Plaintiff’s responsibility to ensure payment of the fee.

Accordingly, **the prior Order (DN 9) obligating Plaintiff to pay the \$400.00 filing fee in this action remains in full effect.**

**IT IS THEREFORE ORDERED** that the Kentucky State Penitentiary shall forward \$400.00 from Plaintiff's inmate account to the Clerk for full payment of the filing fee. The payment shall be made payable to "Clerk, U.S. District Court" and sent to the following address:

Office of the Clerk  
United States District Court  
Western District of Kentucky  
106 Gene Snyder U.S. Courthouse  
601 W. Broadway  
Louisville, Kentucky 40202-2249

Date: September 16, 2014



**Joseph H. McKinley, Jr., Chief Judge  
United States District Court**

cc: Plaintiff, *pro se*  
Kentucky State Penitentiary, 266 Water Street, P.O. Box 5128, Eddyville, KY 42038  
4414.009