

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RUBIN HERRERA and
RICO MENEFEЕ,

Plaintiffs,

v.

CASE NO. 10-11215
HON. JOHN CORBETT O'MEARA
MAGISTRATE JUDGE PAUL J. KOMIVES

M.D.O.C. MULTIPLE DEFENDANTS,
DIRECTOR CARUSO, JAMES ARMSTRONG,
DR. JEFFERY STRIVE, DR. PARMSTALLER,
P.A. PAULA BURTCH, DR. KHAN, DR. PIPER,
NANCY LANG, DR. MORRIS, LESELEY
FUNDUNBURKS, and L. MCMILLAN,

Defendants.

ORDER TO CORRECT PROCEDURAL DEFICIENCIES

Inmates Rubin Herrera and Rico Menefee have filed a *pro se* civil rights complaint against employees of the Michigan Department of Corrections. They seek monetary and injunctive relief, claiming that the defendants were negligent and deliberately indifferent to serious medical conditions, including diabetes.

Although Plaintiffs allege that they paid the filing fee when they filed their complaint, the Court did not receive the filing fee, nor any applications for leave to proceed without prepayment of the fees and costs for this action. Plaintiffs are required to pay the full filing fee for their civil rights complaint, 28 U.S.C. § 1915(b)(1), and because they chose to file their complaint jointly, they share equal responsibility for the filing fee of \$350.00. *In re Prison Litigation Reform Act*, 105 F.3d 1131, 1137-38 (6th Cir. 1997).

At least three of plaintiff Rico Menefee's prior cases have been dismissed as frivolous or for failure to state a claim. See *Menefee v. U.P.S.*, No. 05-74892 (E.D. Mich. Feb. 16, 2006); *Menefee v. Wayne County Jail Food Dep't*, No. 01-73884 (E.D. Mich. Sept. 10, 2002); *Menefee v. Hall*, No. 01-70924 (E.D. Mich. Mar. 26, 2001); *Menefee v. Belfior*, No. 1:01-00060 (W.D. Mich. Feb. 28, 2001). And because he has not shown that he is in "imminent danger of serious physical injury," he must prepay his portion of the filing fee, which is \$175.00. 28 U.S.C. § 1915(g).

Plaintiff Rubin Herrera must either prepay his equal portion of the filing fee (\$175.00) or submit a completed application for leave to proceed without prepayment of fees and costs and a certified statement of his trust fund account for the previous six months. 28 U.S.C. § 1915(a)(2). Plaintiffs are further ordered to submit the address for each defendant and eleven duplicate copies of their complaint and attachments for service on the defendants. See Fed. R. Civ. P. 4(c)(1) ("The plaintiff . . . must furnish the necessary copies to the person who makes service.").

To summarize, Plaintiffs shall submit to the Clerk of Court:

- (1) the full filing fee of \$350.00 **or** a completed application to proceed without prepayment of fees and costs from Rubin Herrera and \$175.00 from Rico Menefee;
- (2) a list of the address for each defendant; and
- (3) eleven duplicate copies of the complaint and its attachments.

Failure to comply with this order within **thirty (30) days** of the date of this order may result in the dismissal of this action.

SO ORDERED.

S/R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Dated: April 13, 2010

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on April 13, 2010.

S/G. Wilson
Judicial Assistant