

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

MICHAEL DEVELL SMITH, #09072-043

PLAINTIFF

VERSUS

CIVIL ACTION NO. 3:09-cv-774-MPM-FKB

**THE UNITED STATES PROBATION OFFICE
AND JUDY JAMES**

DEFENDANTS

ORDER MODIFYING ORDER [8] GRANTING *IN FORMA PAUPERIS* STATUS AND
SETTING PAYMENT SCHEDULE

This cause comes before the Court on Plaintiff's motion for relief from judgement or order under Federal Rule for Civil Procedure Rule 60 [9] as to this Court's order [8] granting *in forma pauperis* status and setting payment schedule. Plaintiff's motion [9] states that the Authorized Officer in charge of inmate accounts made an error on the certificate [2] containing his inmate account information. Plaintiff states that the amount of average monthly balances and monthly deposits for the six month period prior to filing were incorrect. Plaintiff provided this Court with a corrected certificate attached to his motion [9] completed by the Authorized Officer in charge of inmate accounts containing the correct information regarding the average monthly balances and monthly deposits for the six months prior to filing.

A party seeking relief under Rule 60(b) must show: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, . . . misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied . . .; or (6) any other reason justifying relief from the operation of the judgment. FED. R. CIV. P. 60(b). Since Plaintiff shows that there was an error in the reporting of his inmate account information, his motion for relief from judgement or order under Federal Rule for Civil

Procedure Rule 60 [9] will be granted to the extent that the amount of his initial partial filing fee will be modified as the corrected amount of monthly balances and monthly deposits for the six months prior to filing effects the amount of Plaintiff's initial partial filing fee. Accordingly, the Court will modify it's order [8] granting Plaintiff's *in forma pauperis* status and setting payment schedule to reflect the correction by the Authorized Officer in charge of inmate accounts. It is hereby,

ORDERED that Plaintiff's motion for relief from judgement or order under Federal Rule for Civil Procedure Rule 60 [9] is granted to the extent that Plaintiff's initial partial filing fee will be modified as follows.

IT IS FURTHER ORDERED that the Court modifies the previous order [8] granting Plaintiff's *in forma pauperis* status and setting payment schedule as follows. The remaining portions of the order [8] granting *in forma pauperis* status and setting payment schedule not effecting the amount Plaintiff owes as an initial partial filing fee remains in full force and affect.

IT IS FURTHER ORDERED that the Plaintiff's corrected inmate trust fund account statement for the six month period immediately preceding the submission of his complaint, reflects average monthly deposits of \$96.30, an average monthly account balance of \$18.77 and a current balance of 9 cents. The Plaintiff is therefore required to pay an initial partial filing fee of \$19.26. The **Federal Correctional Complex - Yazoo** or other prison at which Plaintiff may be incarcerated is required by law, when Plaintiff's prison account has sufficient funds, to collect the initial partial filing fee of \$19.26 and **forward it to the Clerk, U.S. District Court, P.O. Box 23552, Jackson, Mississippi 39225-3552, with the Plaintiff's name and civil action number 3:09-cv-774-MPM-FKB written on the payment.**

IT IS FURTHER ORDERED that the Clerk is directed to mail copies of this order to the **Plaintiff; and Authorized Officer in charge of inmate accounts, Federal Correctional Complex - Yazoo, P.O. Box 5000, Yazoo City, Mississippi 39194.**

Failure to advise this Court of a change of address or failure to comply with any order of this Court will be deemed as a purposeful delay and contumacious act by the Plaintiff and may result in the dismissal of this case.

THIS the 6th day of May, 2010.

s/ F. Keith Ball
UNITED STATES MAGISTRATE JUDGE