

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JAMES BALLARD,)	
)	
Plaintiff,)	
)	
v.)	No. 4:07CV964 ERW
)	
WARREN COUNTY DETENTION)	
FACILITY, et al.,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This matter is before the Court upon the application of James Ballard (registration no. 70734), an inmate at Warren County Detention Facility, for leave to commence this action without payment of the required filing fee [Doc. #2]. For the reasons stated below, the Court finds that the applicant does not have sufficient funds to pay the entire filing fee and will assess an initial partial filing fee of \$3.33. 28 U.S.C. § 1915(b)(1). Additionally, the Court will order plaintiff to file an amended complaint.

28 U.S.C. § 1915(b)(1)

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action in forma pauperis is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his or her prison account to pay the entire fee, the Court must

assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly balance in the prisoner's account for the prior six-month period. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid. Id.

Applicant has submitted an affidavit and a certified copy of his prison account statement for the six-month period immediately preceding the submission of his complaint. A review of applicant's account indicates an average monthly deposit of \$16.67, and an average monthly balance of \$4.85. Applicant has insufficient funds to pay the entire filing fee. Accordingly, the Court will assess an initial partial filing fee of \$3.33, which is 20 percent of applicant's average monthly deposit.

The Complaint

Plaintiff brings this action under 42 U.S.C. § 1983. Named as defendants are the Warren County Detention Facility, Anthony Barber (Jail Administrator), Kevin Harrison (Sheriff), Wesley Dalton (Judge), and Kim Syms (Correctional Officer). Plaintiff seeks injunctive and monetary relief.

Plaintiff has filed several supplemental pleadings in support of the complaint. These supplemental pleadings do not comply with Rule 7 of the Federal Rules of Civil Procedure, which requires that all of plaintiff's allegations to be included in a single complaint. Consequently, the Court will order plaintiff to file an amended complaint.

Plaintiff is warned that the filing of an amended complaint replaces all previous complaints, and claims that are not realleged are deemed abandoned. E.g., In re Wireless Telephone Federal Cost Recovery Fees Litigation, 396 F.3d 922, 928 (8th Cir. 2005). As a result, plaintiff must include all of the defendants whom he wishes to sue in the caption of the complaint and set out specific facts against each of them in the complaint. Plaintiff shall have 30 days from the date of this Memorandum and Order to file an amended complaint.

Additionally, the Court notes that plaintiff has indicated he is seeking a temporary restraining order (TRO). However, plaintiff has not filed a motion for TRO. A party seeking a TRO, or any other action from the Court, must file a motion to that effect and a memorandum in support of the motion. Fed. R. Civ. P. 7(b); E.D. Mo. Local Rule 4.01(A).

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [Doc. #2] is **GRANTED**.

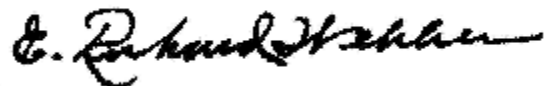
IT IS FURTHER ORDERED that the plaintiff shall pay an initial filing fee of \$3.33 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to "Clerk, United States District Court," and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.

IT IS FURTHER ORDERED that plaintiff shall file an amended complaint within 30 days of the date of this Order.

IT IS FURTHER ORDERED that if plaintiff fails to comply with this Order, this case shall be dismissed.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint because the Court has ordered plaintiff to file an amended complaint.

Dated this 4th Day of June, 2007.



E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE