

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

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|----------------------|---|-------------------|
| DAVID EUGENE BAILEY, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 4:11CV412 TIA |
| |) | |
| JOHN DOE #2, |) | |
| |) | |
| Defendant. |) | |

MEMORANDUM AND ORDER

Plaintiff, a prisoner, has moved for leave to proceed in forma pauperis without the prepayment of the court fees or costs. He has submitted an affidavit of poverty in support thereof.

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. See In re Tyler, 110 F.3d 528, 529-30 (8th Cir. 1997) (under Prison Litigation Reform Act, prisoners are responsible for filing fees the moment a civil action is filed). 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.

Plaintiff 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 plaintiff's account indicates an average monthly deposit of \$7.08, and an average monthly balance of \$0.84. Plaintiff has insufficient funds to pay the entire filing fee. Accordingly, the Court will grant plaintiff's motion to proceed in forma pauperis and assess an initial partial filing fee of \$1.42, which is 20 percent of plaintiff's average monthly deposit.

The Court will deny, however, plaintiff's request to proceed without paying any portion of the filing fee. Title 28 U.S.C. § 1915(b)(1) states, "if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner *shall* be required to pay the full amount of the filing fee." (Emphasis added). Thus, payment of the full amount of the filing fee is mandatory in this case.

Plaintiff has not demonstrated that he has no funds and cannot pay the initial partial filing fee. He has not submitted a copy of his prison account showing he has no funds available in his account, nor has he submitted a financial affidavit showing the

same. As a result, plaintiff's request to proceed without paying any portion of the filing fee will be denied.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [Doc. #5] is **GRANTED IN PART AND DENIED IN PART**. Plaintiff will be allowed to proceed with his lawsuit after payment of the initial partial filing fee.

IT IS FURTHER ORDERED that the plaintiff shall pay an initial filing fee of \$1.42 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's request to proceed without paying any portion of the filing fee [Doc. #5] is **DENIED**.

IT IS FURTHER ORDERED that plaintiff's failure to timely pay the initial partial filing fee will result in the dismissal of this case.

Dated this 22nd day of March, 2011.

/s/ Terry I. Adelman
UNITED STATES MAGISTRATE JUDGE