

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

RONNIE RANDOLPH, Register No. 48868,)	
)	Consolidated Cases
Plaintiff,)	No. 08-4140-CV-C-NKL
)	No. 08-4141-CV-C-NKL
v.)	No. 08-4142-CV-C-NKL
)	No. 08-4143-CV-C-NKL
DAVE DORMIRE, et al.,)	
)	
Defendants.)	

ORDER

On December 11, 2008, United States Magistrate Judge William A. Knox recommended that if the remainder of the initial filing fee was not paid within thirty days of the date of the recommendation, plaintiff’s claims would be dismissed, pursuant to Rule 41(b), Federal Rules of Civil Procedure, for failure to comply with court orders. Judge Knox further recommended that plaintiff’s claims against defendant Olan Salzer be dismissed, pursuant to Rule 4(m), Federal Rules of Civil Procedure.

The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C). No exceptions have been filed.

Plaintiff’s recent filings of a letter and motions to appoint counsel and to compel discovery fail to address why he has not paid his initial filing fee of \$93.65 in full.¹ Plaintiff was assessed the initial filing fee in accordance with the calculation required by 28 U.S.C. § 1915.²

¹On August 26, 2008, plaintiff paid \$10.00 toward his initial filing fee of \$93.65.

²The initial payment is assessed at "20 percent of the greater of (A) the average monthly deposits to the prisoner’s account; or (B) the average monthly balance in the prisoner’s account for the 6-month period immediately preceding the filing of the complaint or notice of appeal." The installment payments will be assessed at "20 percent of the preceding month’s income credited to the prisoner’s account. The agency having custody of the prisoner shall forward payments from the prisoner’s account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid." 28 U.S.C. § 1915. If plaintiff has not signed an authorization for release of inmate account funds, he will need to do so promptly.

Plaintiff has failed to show why such assessment is incorrect. At the time plaintiff filed this case, his average inmate account balance was \$433.77.

A review of the record convinces the court that the recommendation of the Magistrate Judge is correct and should be adopted.

Inmates who file an appeal with the United States Court of Appeals for the Eighth Circuit are required to pay the full \$455.00 appellate filing fee, regardless of the outcome of the appeal. Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997). The filing of a notice of appeal is considered a consent by the inmate to allow prison officials to deduct an initial partial appellate filing fee and later installments from the prisoner's account.

IT IS, THEREFORE, ORDERED that the Report and Recommendation of December 11, 2008, is adopted. [24] It is further

ORDERED that plaintiff's claims against defendant Olan Salzer are dismissed, pursuant to Rule 4(m), Federal Rules of Civil Procedure. It is further

ORDERED that plaintiff's remaining claims are dismissed, pursuant to the provisions of Rule 41(b), Federal Rules of Civil Procedure, for failure to comply with court orders. It is further

ORDERED that the pending motions in this case are denied as moot. [12, 16, 18, 28, 29, 31]

/s/ _____

NANETTE K. LAUGHREY
United States District Judge

Dated: _____
Jefferson City, Missouri