

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KENYATTA T. JAMES,

8:11CV185

Plaintiff,

v.

**MEMORANDUM
AND SHOW CAUSE ORDER**

UNITED STATES OF AMERICA,

Defendant.

On August 2, 2011, I granted the Application to Proceed in District Court Without Prepaying Fees or Costs (“IFP”) filed by the plaintiff, Kenyatta T. James. (Filing No. 9.) In doing so, and pursuant to [28 U.S.C. § 1915\(b\)\(1\)](#), I ordered Mr. James to pay an initial partial filing fee of \$215.45 by August 31, 2011. (*Id.*) I calculated this initial partial filing fee using Mr. James’ institutional trust account statement, which showed an average monthly account balance of \$1077.29.¹ On September 6, 2011, Mr. James filed a Motion for Enlargement of Time requesting an additional 60 days in which to pay the initial partial filing fee. (Filing No. 10.) I granted this motion and gave him until October 31, 2011, to pay the initial partial filing fee. (Filing No. 11.) On October 7, 2011, James paid an initial partial filing fee of only \$3.20, or \$212.25 less than the court-assessed initial partial filing fee. (See Docket Sheet; Filing No. 9.)

In *Wilson v. Sargent*, the Eleventh Circuit Court of Appeals discussed how a district court collects an initial partial filing fee and addressed the steps a district

¹ James’ trust account statement also showed that he had average deposits of \$17.00 for the six months preceding the filing of his Complaint. (Filing No. 8.) However, Pursuant to [28 U.S.C. § 1915\(b\)\(1\)](#), a plaintiff must pay an initial partial filing fee in the amount of 20 percent of the **greater** of plaintiff’s average monthly account balance or average monthly deposits for the six months preceding the filing of the complaint.

court should take when a prisoner fails to pay an initial partial filing fee. [313 F.3d 1315, 1320-21 \(11th Cir. 2002\)](#).

Once the district court assesses an initial partial filing fee, the inmate is liable for its payment. *See* [§ 1915\(b\)\(1\)](#). If the prisoner's account does not contain the full amount assessed as an initial partial filing fee, the inmate must ensure that any available portion of that initial fee is withdrawn from his account and transmitted to the clerk of the district court. *See* [Hatchet \[v. Nettles\], 201 F.3d \[651,\] 653 \[\(5th Cir. 2000\)\]](#). Once the entire initial partial filing fee is paid pursuant to [§ 1915\(b\)\(1\)](#), the PLRA requires that the prisoner make monthly payments equivalent to 20 percent of the preceding month's income credited to his or her account each time the balance exceeds \$10, until the entire remainder of the filing fee is paid. *Id.* [§ 1915\(b\)\(2\)](#).

...

The Fifth Circuit concluded in *Hatchet* that once the prisoner fails to pay the court-ordered initial partial filing fee, the district court must take reasonable steps to determine whether the prisoner complied with the order by authorizing payment by prison officials. *Id.* at 654. These steps may include issuing a show-cause order, allowing objections to the magistrate's report, communicating by telephone, fax, or email with officials of the custodial institution, and issuing an order to the custodial institution. *See id.* According to the Fifth Circuit, a prisoner's response containing copies of any relevant consent forms or an affidavit detailing the prisoner's compliance "ordinarily will be sufficient to avoid dismissal for failure to comply with an initial partial filing fee order." *Id.*

We agree with the Fifth Circuit and hold that before dismissing a prisoner's complaint for failure to comply with an IFP order directing the prisoner to pay an initial partial filing fee pursuant to [28 U.S.C. § 1915](#), the district court must take reasonable steps, such as those outlined by the Fifth Circuit, to determine whether the prisoner complied with the order by authorizing payment by prison officials. *See* [Hatchet](#),

[201 F.3d at 654.](#)

[Id. at 1320-21.](#) I find the Eleventh Circuit's persuasive.

Here, James failed to pay the full amount of the court-assessed initial partial filing fee. (*See* Filing No. [9](#); Docket Sheet.) Moreover, James paid only \$3.20 on October 7, 2011, despite having deposits of \$218.64 in September 2011 and \$216.00 in October 2011. (*See* Filing No. [13](#).) Accordingly, James shall have until November 25, 2011, to show cause for his failure to pay the full amount of the court-assessed initial partial filing fee. If James fails to respond, or show cause, by November 25, 2011, this matter will be dismissed without further notice for failure to comply with this court's orders. If James elects to show cause, he shall submit copies of any relevant consent forms or an affidavit detailing his compliance with my August 2, 2011, Memorandum and Order.

IT IS THEREFORE ORDERED that:

1. Kenyatta T. James shall have until **November 25, 2011**, to show cause for his failure to pay the full amount of the court-assessed initial partial filing fee. If James fails to respond by November 25, 2011, or fails to show cause, this matter will be dismissed without further notice for failure to comply with this court's orders.
2. If James elects to show cause, he shall submit copies of any relevant consent forms or an affidavit detailing his compliance with my August 2, 2011, Memorandum and Order.
3. The clerk of the court is directed to send a copy of this order to the appropriate official at Kenyatta T. James' institution.
4. The clerk of the court is directed to set a pro se case management

deadline in this case using the following text: **November 25, 2011**: deadline to show cause for failure to pay full amount of court-assessed initial partial filing fee.

5. Kenyatta T. James shall keep the court informed of his current address at all times, and all parties are bound by the Federal Rules of Civil Procedure and by the court's Local Rules while this case is pending.

Dated November 7, 2011.

BY THE COURT

s/ Warren K. Urbom
United States Senior District Judge