

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

GEORGOS DIAMANTOPOULOS,)
)
Petitioner,)
)
v.)
)
STATE OF NEBRASKA,)
DEPARTMENT OF)
CORRECTIONS, and ROBERT)
HOUSTON,)
)
Respondents.)

8:11CV406

**MEMORANDUM
AND ORDER ON REQUEST FOR
LEAVE TO PROCEED IN FORMA
PAUPERIS**

This matter is before me on Georgos Diamantopoulos’ request for leave to proceed In Forma Pauperis (“IFP”). (Filing No. [2](#).) As set forth in the Prison Litigation Reform Act (“PLRA”), a prisoner cannot:

[B]ring a civil action or appeal a judgment in a civil action or proceeding [in forma pauperis] if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action . . . in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

[28 U.S.C. §1915\(g\)](#).

The following three cases or appeals brought by Georgos Diamantopoulos were dismissed because they failed to state a claim upon which relief may be granted or because they were frivolous:

- *Rehbein v. Nelson, et al.*,¹ No. 4:95CV3157 (D. Neb.), dismissed on August 18, 1995. (Case No. 4:95CV3157, Filing Nos. 13 and 14 ([see Docket Sheet](#)).)
- *Diamantopoulos v. Director of Corrections, et al.*, No. 4:05CV3097 (D. Neb.), dismissed on May 13, 2005. (Case No. 4:05CV3097, Filing Nos. [9](#) and [10](#).)
- *Diamantopoulos v. State of Nebraska, et al.*, No. 8:07CV31 (D. Neb.), dismissed on October 14, 2008. (Case No. 8:07CV31, Filing Nos. [95](#) and [96](#).)

The Eighth Circuit has recognized that civil actions or appeals dismissed as frivolous, malicious, or for failure to state a claim before the effective date of the PLRA, are to be counted in determining whether a prisoner has three “strikes” and therefore may no longer prosecute a claim in forma pauperis. *See In re Tyler*, [110 F.3d 528, 529 \(8th Cir. 1997\)](#) (recognizing without discussion the dismissal of Plaintiff’s pre-PLRA claims in determining his number of strikes). Accordingly, Georgos Diamantopoulos has until **January 9, 2012**, to show cause why he is entitled to proceed IFP pursuant to [28 U.S.C. §1915\(g\)](#). Alternatively, he may pay the full \$350.00 filing fee no later than **January 9, 2012**. In the absence of good cause shown or the payment of the full filing fee, the plaintiff’s Complaint and this matter will be dismissed without further notice.

IT IS THEREFORE ORDERED that:

1. Georgos Diamantopoulos’ request to proceed In Forma Pauperis (filing no. [2](#)) is denied. He has until **January 9, 2012**, to either show cause why he is

¹Yourgos Diamantopoulos is also known as Cary Nelson Rehbein. *See* Nebraska Department of Correctional Services, Inmate Locator, *at* <http://dcs-inmatesearch.ne.gov/Corrections/InmateDisplayServlet?DcsId=35084> (last visited Dec. 9, 2011).

entitled to proceed IFP pursuant to [28 U.S.C. §1915\(g\)](#) or pay the full \$350.00 filing fee. In the absence of either action by Georgos Diamantopoulos, this matter will be dismissed without further notice.

2. The clerk of the court is directed to set a pro se case management deadline in this matter with the following text: January 9, 2012: deadline for Georgos Diamantopoulos to show cause or pay full filing fee.

Dated December 12, 2011.

BY THE COURT

s/ Warren K. Urbom
United States Senior District Judge