

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

John Russo

v.

Civil No. 11-cv-587-SM

State of New Hampshire

ORDER GRANTING MOTION TO PROCEED
IN FORMA PAUPERIS

The plaintiff, an inmate at New Hampshire State Prison (“Institution”), has filed a motion to proceed *in forma pauperis* in the above-captioned case, which is accompanied by a certificate signed by an authorized individual from the Institution. The certificate dated December 31, 2011, evidences that over the last six months, the plaintiff’s average deposits have been \$4.25, the plaintiff’s average monthly balance has been \$12.41, and the current balance is \$3.29.

The motion to proceed *in forma pauperis* is GRANTED; however, pursuant to 28 U.S.C. § 1915(b)(1), due to the plaintiff’s current balance, an initial filing fee is assessed in the amount of \$0. In addition, monthly payments of 20% of each preceding month’s income credited to the plaintiff’s account shall be remitted by the Institution when the amount in the account exceeds \$10.00 until the sum of \$350.00 has been paid. 28 U.S.C. § 1915(b)(2). Before indicating whether he agrees to pay the filing fee and proceed with this civil action, the plaintiff should be informed of the following.

First, the plaintiff is hereby on notice that the court may dismiss this action if it:

- (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or
- (2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A(b); LR 4.3(d)(2). If the court does dismiss the action, the plaintiff will still be required to pay the filing fee in full.

Second, the plaintiff is advised that, in the event he is released from incarceration prior to the filing fee of \$350.00 being paid in full, he is still required to pay the entire filing fee.

Third, the plaintiff should note that a prisoner who has had three civil actions dismissed under 28 U.S.C. § 1915(e) may not thereafter, absent "imminent danger of serious physical injury," file a new civil action without prepayment of the entire filing fee. 28 U.S.C. § 1915(g).

Therefore, on or before January 30, 2012, the plaintiff shall return the attached Prisoner Consent Form and indicate whether he intends to incur the cost of the filing fee and proceed with this action, or whether he intends not to proceed with this litigation at this time. The failure to return the attached Prisoner Consent Form by the above deadline will be interpreted as indicating the plaintiff's desire not to proceed with this litigation and will result in the dismissal of the complaint. In the event the plaintiff elects to proceed with this matter and so indicates on a signed Prisoner Consent Form, the initial partial filing fee shall be forwarded to the Clerk of Court by the Institution in accordance with this Order. A copy of this Order, along with a copy of the signed Prisoner Consent Form, shall be forwarded by the Court to the Institutions inmate account department *following* the plaintiff's indication to the Court that he intends to go forward with this matter and incur the \$350.00 cost of suit.

SO ORDERED.

Dated: January 9, 2012



Landya B. McCafferty
U.S. Magistrate Judge

cc: John Russo

~PLEASE DELIVER THIS FORM TO INTAKE~

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New Hampshire State Prison

Date Prisoner Must File Consent Form With Court: **Monday, January 30, 2012**

Mail Consent Form To: U.S. Courthouse, 55 Pleasant St., Rm. 110, Concord, NH 03301

PRISONER CONSENT FORM

I have been informed by the court that in order to pursue my civil lawsuit in the above-captioned case, I must agree to pay an initial filing fee in the amount of \$0. In addition, I must agree that 20% of each preceding month's income credited to my inmate account shall be paid from my account to the Clerk of Court when the amount in the account exceeds \$10.00 until the sum of \$350.00 has been paid.

I DO NOT AGREE to have the initial filing fee remitted from my inmate account, and I understand that, as a result of my decision, the case will be dismissed without prejudice.

I DO AGREE to have the initial filing fee, and monthly payments of 20% of each preceding month's income credited to my inmate account (when the account balance exceeds \$10), paid from my inmate account to the Clerk of Court until the sum of \$350.00 has been paid in full. Specifically, I authorize inmate accounts to retain 20% of all income deposited into my inmate account and to submit that amount to the United States District Court for the District of New Hampshire until the filing fee is paid in full. I authorize the clerk's office to forward a copy of the court's prior order granting my in forma pauperis request, as well as this Prisoner Consent Form, to New Hampshire State Prison inmate accounts. I also authorize inmate accounts to deduct payments from my account consistent with the attached court order. This authorization shall apply to any other agency into whose custody I may be transferred. I understand that in the event I am released from custody prior to making full payment of the filing fee, I am still required to pay the remainder of the unpaid fee. By checking this box, I understand that it is not necessary to submit an inmate slip to authorize payment and that the Court will contact inmate accounts directly to request payment on my behalf.

Print Full Name and Inmate Number: _____

Date: _____

Plaintiff/Inmate Signature