

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

ALTON RAYMOND AMES,)	
)	
Plaintiff,)	
vs.)	NO. CIV-06-0668-HE
)	
ANDREA D. MILLER,)	
)	
Defendant.)	

ORDER

Plaintiff Alton Raymond Ames instituted this action pursuant to 42 U.S.C. § 1983, alleging that defendant Andrea D. Miller, his former attorney, committed legal malpractice and violated his constitutional rights.¹ Consistent with 28 U.S.C. §636(b)(1)(B), the matter was referred to Magistrate Judge Gary M. Purcell, who, having concluded the plaintiff has sufficient financial resources to pay the filing fee, has recommended that the plaintiff’s motion for leave to proceed *in forma pauperis* (“IFP”) be denied. The magistrate judge also recommends that action be dismissed without prejudice unless the plaintiff pays the full filing fee to the clerk of the court by July 11, 2006.

The plaintiff has objected to the Report and Recommendation, asserting that the magistrate judge failed to identify the resources he has available to pay the filing fee, failed to specify the amount of the filing fee, and failed to allow him to make periodic partial payments of the fee. He claims it would be difficult for him to pay the filing fee in a lump

¹As it is questionable whether the plaintiff has pleaded anything other than a legal malpractice claim against the defendant arising under state law, the action may be one over which the court lacks subject matter jurisdiction and which should be filed in state court.

sum and also makes unsubstantiated assertions of bias on the part of both the magistrate judge and the undersigned judge.²

The court has reviewed the plaintiff's IFP application and concurs with the magistrate judge that the plaintiff is capable of paying the \$350 filing fee.³ *See* IFP Application, Certificate, p. 2. Accordingly, the court adopts Magistrate Judge Purcell's Report and Recommendation and **DENIES** the plaintiff's application for IFP status [Doc. #2]. Unless the filing fee is paid in full by Monday, July 17, 2006, this action will be dismissed without prejudice.

IT IS SO ORDERED.

Dated this 29th day of June, 2006.



JOE HEATON
UNITED STATES DISTRICT JUDGE

²The plaintiff's requests that Magistrate Judge Purcell be removed from the case and that the plaintiff be granted leave to file a brief requesting "Judicial recusal" are denied.

³If the plaintiff decides to proceed with the action, he may ask that the filing fee be paid from his savings account.