

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

RUSTY RICHARD DAVIES,

Petitioner,

v.

**COMMONWEALTH OF
PENNSYLVANIA, et al.,**

Respondent.

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C.A. No. 07-103E

**Judge McLaughlin
Magistrate Judge Baxter**

REPORT AND RECOMMENDATION

I. RECOMMENDATION

It is respectfully recommended that Petitioner's Motion to Proceed In Forma Pauperis (Docket No. 1) be denied and the case be dismissed without prejudice.

II. REPORT

When submitting a Motion to Proceed In Forma Pauperis, a petitioner is required to submit an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. 28 U.S.C. § 1915(a)(1). In addition to the aforementioned affidavit, a petitioner is further required to “submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.” 28 U.S.C. § 1915(a)(2).

In this case, Petitioner has failed to submit a copy of his institutional account statement, certified or otherwise. Because Petitioner has failed to comply with the statutory prerequisites for proceeding In Forma Pauperis, Petitioner’s Motion to Proceed In Forma Pauperis should be denied and the case dismissed without prejudice.

III. CONCLUSION

For the reasons set forth above, it is recommended that the Petitioner's Motion to Proceed In Forma Pauperis (Docket No. 1) be denied and the case dismissed without prejudice.

In accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.1.4(B) of the Local Rules for Magistrate Judges, the parties are allowed ten (10) days from the date of service to file objections to this report and recommendation. Any party opposing the objections shall have seven (7) days from the date of service of objections to respond thereto. Failure to file timely objections may constitute a waiver of any appellate rights. See Nara v. Frank, ___ F.3d ___, 2007 WL 1321929 (3d Cir. May 08, 2007).

Dated: May 10, 2007

By the Court:

S/ Susan Paradise Baxter
Susan Paradise Baxter
Chief U.S. Magistrate Judge