

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

LARRY RENA BROWN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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**3 08 0946**  
No. 3:08mc0190  
Judge Nixon

**ORDER**

Before the Court is a *pro se* petition for a writ of *audita querela* filed under 28 U.S.C. § 1651. The petitioner also has submitted an application to proceed *in forma pauperis*.

The petitioner is a prisoner in the Federal Correctional Institution (FCI), Forrest City, Arkansas. It appears from his application that he lacks sufficient financial resources to pay the filing fee. Therefore, pursuant to 28 U.S.C. § 1915(b)(4), the Clerk will file the complaint *in forma pauperis* 28 U.S.C. § 1915(a).

The petitioner is herewith assessed the civil filing fee of three hundred fifty dollars (\$350.00). Pursuant to 28 U.S.C. §§ 1915(b)(1)(A) and (B), the custodian of the petitioner's inmate trust fund account at the institution where he now resides is directed to submit to the Clerk of Court, as an initial payment, whichever is the greater of:

- (a) twenty percent (20%) of the average monthly deposits to the petitioner's inmate trust fund account; **or**
- (b) twenty percent (20%) of the average monthly balance in the petitioner's inmate trust fund account for the prior six (6) months.

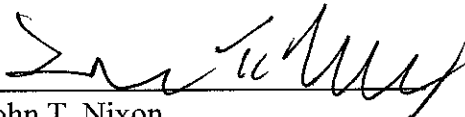
Thereafter, the custodian shall submit twenty percent (20%) of the petitioner's preceding monthly

income, or income credited to the petitioner's inmate trust fund account for the preceding month, but only when his monthly income exceeds ten dollars (\$10.00). Payments shall continue until the \$350.00 filing fee has been paid in full to the Clerk of Court as prescribed by 28 U.S.C. § 1914(a) 28 U.S.C § 1915(b)(2)

As provided in the Memorandum entered contemporaneously herewith, the petitioner's complaint is **DISMISSED** as frivolous 28 U.S.C. §§ 1915(e)(2)(B)(i); 1915A(b)(1) Dismissal of this action shall constitute a "strike" under 28 U.S.C. § 1915(g). Because an appeal from the judgment rendered herein would **NOT** be taken in good faith, the petitioner is **NOT** certified to pursue an appeal from this judgment *in forma pauperis* 28 U.S.C. § 1915(a)(3); *Coppedge v United States*, 369 U.S. 438, 444-46 (1962). Nevertheless, should the petitioner decide to file a notice of appeal, he either must pay the Clerk of Court the full appellate filing fee of four hundred fifty-five dollars (\$455.00), or submit a new application to proceed *in forma pauperis* with a certified copy of his inmate trust account statement for the six (6) month period preceding the filing of his notice of appeal. 28 U.S.C. §§ 1915(a)(1) and (a)(2); *McGore v Wrigglesworth*, 114 F.3d 601, 605 (6<sup>th</sup> Cir. 1997).

The Clerk is **DIRECTED** to send a copy of this Order to the Warden at FCI Forrest City to ensure that the custodian of the petitioner's inmate trust fund account complies with the portion of the Prison Litigation Reform Act that pertains to the payment of filing fees.

It is so **ORDERED**.

  
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John T. Nixon  
Senior United States District Judge