

1
2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 TOBY J. MASSE,

7 Plaintiff,

8 v.

9 PAT GLEBE, et al.,

10 Defendants.

No. C08-5752 RBL/KLS

REPORT AND RECOMMENDATION
Noted for August 28, 2009

11
12 This case was referred to United States Magistrate Judge Karen L. Strombom pursuant to
13 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Plaintiff filed a civil rights complaint under 42
14 U.S.C. § 1983, but failed to pay a filing fee or file an application to proceed *in forma pauperis*.
15 Dkt. # 1. To file a complaint and initiate legal proceedings, a plaintiff must pay a filing fee of
16 \$350.00 or file a proper application to proceed *in forma pauperis*. Accordingly, Plaintiff was
17 ordered to file an application to proceed *in forma pauperis* or pay the filing fee. Dkt. 3. Plaintiff
18 has not responded to the Court's Order.
19

20
21 **I. DISCUSSION**

22 The court may permit indigent litigants to proceed *in forma pauperis* upon completion of
23 a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the court has broad
24 discretion in denying an application to proceed *in forma pauperis*. *Weller v. Dickson*, 314 F.2d
25 598 (9th Cir. 1963), *cert. denied*, 375 U.S. 845 (1963).
26

REPORT AND RECOMMENDATION - 1

1 Several district courts have ruled that denial of *in forma pauperis* status is not
2 unreasonable when a prisoner is able to pay the initial expenses required to commence a lawsuit.
3 *See Temple v. Ellerthorpe*, 586 F.Supp. 848 (D.R.I. 1984); *Braden v. Estelle*, 428 F.Supp. 595
4 (S.D.Tex. 1977); *U.S. ex rel. Irons v. Com. of Pa.*, 407 F.Supp. 746 (M.D.Pa. 1976); *Shimabuku*
5 *v. Britton*, 357 F.Supp. 825 (D.Kan. 1973), *aff'd*, 503 F.2d 38 (10th Cir. 1974); *Ward v. Werner*,
6 61 F.R.D. 639 (M.D.Pa. 1974).

7
8 On December 16, 2008, Plaintiff filed his proposed petition for civil rights violation.
9 Dkt. 1. On January 7, 2009, the Clerk advised Plaintiff that he must submit either the full
10 \$350.00 filing fee or an application for *in forma pauperis* status by February 6, 2009 or his
11 action may be subject to dismissal. Dkt. 2. On March 19, 2009, the Court ordered the Plaintiff
12 to pay the \$350.00 filing fee or submit a proper application to proceed *in forma pauperis* no later
13 than April 17, 2009. Dkt. 3. The Court advised Plaintiff that his failure to either pay the filing
14 fee or submit a proper application to proceed *in forma pauperis* by the April 17, 2009 deadline
15 would be deemed a failure to properly prosecute this matter and that the undersigned would
16 recommend dismissal of this matter. *Id.* Plaintiff did not respond to the Court's Order, pay the
17 filing fee or submit an application to proceed *in forma pauperis*.
18

19 II. CONCLUSION

20 The undersigned recommends the Court dismiss Plaintiff's Complaint unless he pays the
21 required \$350.00 fee **within thirty (30) days** of the Court's order.
22

23 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), the parties
24 shall have ten (10) days from service of this Report and Recommendation to file written
25 objections thereto. *See also* Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of
26 those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating

1 the time limit imposed by Fed. R. Civ. P. 72(b), the Clerk is directed to set this matter for
2 consideration on **August 28, 2009**, as noted in the caption.

3 **DATED** this 7th day of August, 2009.

4
5 
6 Karen L. Strombom
7 United States Magistrate Judge
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26