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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 RICHARD D. YORK,

Petitioner,

v.

9 MAGGIE MILER-STOUT,

Respondent.

No. C09-5513 RBL/KLS

REPORT AND RECOMMENDATION
Noted for: October 23, 2009

11 This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28
12 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Petitioner is an inmate at the Airway Heights
13 Correction Center (AHCC). He has filed a petition for writ of *habeas corpus* pursuant to 28
14 U.S.C. § 2254 and an application to proceed *in forma pauperis*. Dkt. 1. Because Petitioner
15 appears to have sufficient funds with which to pay the \$5.00 court filing fee, the undersigned
16 recommends the Court deny the application.

17 **DISCUSSION**

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

22 Several district courts have ruled that denial of *in forma pauperis* status is not
23 unreasonable when a prisoner is able to pay the initial expenses required to commence a lawsuit.
24 See *Temple v. Ellerthorpe*, 586 F.Supp. 848 (D.R.I. 1984); *Braden v. Estelle*, 428 F.Supp. 595
25 (S.D.Tex. 1977); *U.S. ex rel. Irons v. Com. of Pa.*, 407 F.Supp. 746 (M.D.Pa. 1976); *Shimabuku*
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REPORT AND RECOMMENDATION - 1

1 v. Britton, 357 F.Supp. 825 (D.Kan. 1973), *aff'd*, 503 F.2d 38 (10th Cir. 1974); *Ward v. Werner*,
2 61 F.R.D. 639 (M.D.Pa. 1974).

3 By requesting the Court to proceed *in forma pauperis*, Petitioner is asking the
4 government to incur the filing fee because he allegedly is unable to afford the costs necessary to
5 proceed with his petition for *habeas corpus*. Petitioner's application reflects that he is employed
6 at AHCC and earns \$50.00 per month and that he has an average spendable balance of \$86.26.
7 Dkt. 1, pp. 1 and 3. The undersigned recognizes that the funds to which Petitioner has access
8 may not be great. However, given the fact that a prisoner's basic needs are provided for while he
9 is incarcerated and the minimal filing fee required to proceed with this action (\$5.00), it is not
10 unreasonable to expect Petitioner to pay that fee from those funds.
11

12 CONCLUSION

13 Because Petitioner appears to have sufficient funds to pay the filing fee, the undersigned
14 recommends that the Court deny his application to proceed *in forma pauperis*.
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16 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure
17 ("Fed. R. Civ. P."), Petitioner shall have ten (10) days from service of this Report and
18 Recommendation to file written objections thereto. See also Fed. R. Civ. P. 6. Failure to file
19 objections will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474
20 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed set
21 this matter for consideration on **October 23, 2009**, as noted in the caption.
22

23 DATED this 5th day of October, 2009.

24 
25 Karen L. Strombom
26 United States Magistrate Judge