

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KEVIN L. WILKE,

Plaintiff,

v.

ADAM STUBLASKI, MATTHEW STAKE,
BRIAN HAYES, DAVID SCHWARTZ,
HONORABLE JUDGE WRIGHT,
HONORABLE JUDGE POTTER AND
HONORABLE JUDGE DUTCHER,

Defendants.

ORDER

Case No. 14-cv-639-wmc

Plaintiff Kevin L. Wilke, an inmate in the custody of the Waushara County Jail, has submitted a proposed civil action under 42 U.S.C. § 1983. Plaintiff has filed a copy of his inmate account statement in support of his motion for leave to proceed without prepaying the fee. (Dkt. #2). After considering the motion and supporting documentation, the court concludes that plaintiff qualifies for indigent status.

Even when a prisoner litigant qualifies for indigent status, he must pay a portion of the fee returned by the formula set forth in 28 U.S.C. § 1915(b)(1). According to this formula, a prisoner litigant must prepay 20% of the greater of the average monthly balance or the average monthly deposits made to his prison account in the six-month period immediately preceding the filing of the complaint. Unless plaintiff lacks sufficient funds, he must make an initial partial payment of the filing fee before the court will consider the complaint.

From the account statement that plaintiff submitted with this complaint, plaintiff's average monthly balance and average monthly deposits are both \$0.00. Therefore, it appears

that plaintiff presently has no means with which to pay the filing fee for his complaint or to make an initial partial payment. Under these circumstances, the court will grant plaintiff's motion for leave to proceed without prepayment of the fee, but will not assess an initial partial filing fee. Plaintiff is advised, however, that he will remain obligated to pay the full amount of the \$350 filing fee for indigent litigants, even if this court ultimately determines that his complaint cannot go forward. *See* 28 U.S.C. § 1915A. Plaintiff's account will be monitored and jail officials are authorized to deduct the fee in monthly installments when the funds are available in accordance with the formula found in the PLRA, 28 U.S.C. § 1915(b)(2). The Clerk of Court will ensure that the court's financial records reflect that plaintiff owes the \$350 fee for filing this case.

ORDER

IT IS ORDERED that:

1. The motion filed by plaintiff Kevin Wilke for leave to proceed without prepayment of filing fee (Dkt. # 2) is GRANTED.
2. No further action will be taken in this case until the court has screened the complaint as required by the PLRA, 28 U.S.C. § 1915A. Once the screening process is complete, a separate order will issue.

Entered this 24th day of _September, 2014.

BY THE COURT:

/s/
PETER OPPENEER
Magistrate Judge