

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

CLIFFORD HOOD,

Plaintiff,

vs.

CIVIL ACTION
No. 02-3305-SAC

PRISONER HEALTH SERVICES, et al.,

Defendants.

ORDER

Plaintiff, a prisoner in the custody of the State of Kansas, initiated this action with a pro se complaint filed under 42 U.S.C. 1983. By an order dated March 28, 2005, the court dismissed the complaint pursuant to 28 U.S.C. 1915(e)(2)(B)(i)-(ii). Plaintiff filed a notice of appeal from that final order and judgment, but did not submit payment of the \$255.00 filing fee for his appeal. By an order dated May 18, 2005, the court directed plaintiff to pay this appellate filing fee, or to submit a motion for leave to proceed in forma pauperis on appeal, as required by 28 U.S.C. 1915 as amended by the Prison Litigation Reform Act (PLRA) enacted March 26, 1996.

In response (Docs. 29 and 31), plaintiff argues he is entitled to proceed in forma pauperis on appeal pursuant to Rule 24(a)(3) of the Federal Rules of Civil Procedure, absent this court's certification the appeal is not taken in good faith, or finding that plaintiff is otherwise not entitled to proceed in forma pauperis on appeal. However, as amended in 2002, Rule

24(a)(3) provides that a party permitted to proceed in forma pauperis in the district court may proceed in forma pauperis on appeal without further authorization unless the district court certifies the appeal is not taken in good faith or finds the party is not otherwise entitled to proceed in forma pauperis, Fed.R.App.P. 24(a)(3)(A), or unless a statute provides otherwise, Fed.R.App.P. 24(a)(3)(B). See Jackson v. Stinnett, 102 F.3d 132, 136 (5th Cir. 1996)(Congress implicitly amended Rule 24(a) of the Federal Rules of Appellate Procedure to the extent it conflicts with the PLRA).

Accordingly, plaintiff's objections to the PLRA filing and fee requirements imposed by 28 U.S.C. 1915(a) and (b) for proceeding in forma pauperis on appeal are denied. To proceed on appeal without prepayment of the \$255.00 filing fee, plaintiff must submit an executed form motion for leave to proceed in forma pauperis under 28 U.S.C. 1915 that is supported by the certified financial records required under 28 U.S.C. 1915(a)(2). The court grants plaintiff additional time to comply with this statutory requirement.

Once this pleading and financial information has been provided, the court can assess the initial partial appellate filing fee, 28 U.S.C. 1915(b)(1), to be paid by plaintiff. If granted leave to proceed in forma pauperis on appeal, the remainder of the \$255.00 filing fee is then subject to collection through automatic payments over time from plaintiff's inmate trust fund account, as provided by 28 U.S.C. 1915(b)(2).

IT IS, THEREFORE, BY THE COURT ORDERED that plaintiff is granted thirty (30) days from the date of this order to pay the \$255.00 filing fee for his appeal, or to submit an executed form motion for seeking leave to proceed in forma pauperis on appeal that is supported by a certified copy of his institutional financial records for the six months preceding March 28, 2005, from all facilities in which he was housed during that period.

The clerk's office is to again provide plaintiff with a form motion for seeking leave to proceed in forma pauperis under 28 U.S.C. 1915.

IT IS SO ORDERED.

DATED: This 13th day of June 2005 at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge