

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DANNY ELLIOTT BEAUCLAIR,

Plaintiff,

v.

CASE NO. 03-3237-SAC

BILL GRAVES, et al.,

Defendants.

O R D E R

Plaintiff filed a pro se complaint under 42 U.S.C. § 1983, seeking relief for alleged violations of his rights during his confinement. The court dismissed the complaint as stating no claim for relief, and plaintiff filed an appeal. Noting that plaintiff's average monthly deposit for the last six months was \$179.11, and that plaintiff's average monthly balance for that period was \$572.59, the court assessed an initial partial appellate filing fee of \$114.00 based upon plaintiff's average monthly balance. 28 U.S.C. § 1915(b)(1).

Before the court is plaintiff's objection to this assessed fee. Plaintiff states the "available balance" information in the financial summary provided by the Kansas Department of Corrections (KDOC) includes mandatory savings funds not available, pursuant to KDOC regulations, for payment of court filing fees. Plaintiff documents his request for payment of the \$114.00 assessed fee, which KDOC officials rejected because plaintiff had only \$22.26 in his account. Plaintiff also documents his "Inmate Bank Statement" for July 2006, which breaks down his "Balance" information into "Cash" and "Savings." This more detailed accounting reflects a "Savings"

balance of \$451.60 to \$463.41 for that month, and a "Cash" balance of \$120.64 to \$65.20.

Based on this additional information, the court finds merit to plaintiff's request that the initial partial filing fee required by 28 U.S.C. § 1915(b)(1) be recalculated using only the funds available to plaintiff for paying such a fee.¹ Accordingly, to proceed on appeal in forma pauperis without prepayment of the \$455.00 appellate filing fee, plaintiff is to pay an initial partial filing fee of \$35.50, which is twenty percent of the average deposit to plaintiff's inmate account for the six month period preceding plaintiff's filing of his notice of appeal, rounded to the lower half dollar.

IT IS THEREFORE ORDERED that the fee order entered on August 9, 2006, is set aside, and that within thirty (30) days plaintiff is to submit an initial partial appellate filing fee of \$35.50. Any objection to this order must be filed on or before the date payment is due.

The clerk's office is to transmit a copy of this order to plaintiff and to the Finance Officer where plaintiff is currently confined.

IT IS SO ORDERED.

DATED: This 25th day of August 2006 at Topeka, Kansas.

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

¹The court denies plaintiff's alternative requests for a court order requiring KDOC officials to pay from plaintiff's mandatory savings wither the \$114.00 initial partial appellate filing fee originally assessed or the full \$455.00 appellate filing fee.