

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

RONALD MURRAY, pro se,
Plaintiff,

vs.

Case No. 04-1298-JTM

EDWARDS COUNTY SHERIFF'S
DEPARTMENT, KEN SCHMIDT,
BRYANT KURTH, MARK FRAME, JULIE
LONG, and KENNETH DUPREE,
Defendants.

MEMORANDUM AND ORDER

On December 8, 2006, the Court of Appeals wrote Murray notifying him that he must either pay the \$5.00 filing fee and the \$450.00 docket fee to the Clerk of this Court, or apply to the Court of Appeals for leave to proceed on appeal without prepayment of fees pursuant to 28 U.S.C. 1915. (Dkt. No. 249). On December 14, 2006, this court entered an order granting plaintiff Murray the right to proceed in forma pauperis and applying 28 U.S.C. § 1915(b)(1) and (2); required Murray to make an initial partial filing fee of \$5.40; and thereafter required the custodian of plaintiff's account to make additional monthly payments until the full filing fee was paid.

On January 4, 2007, the Court of Appeals entered an order noting that Murray has moved for leave to proceed without the prepayment of fees, and stating further that he had agreed to the disbursement of partial payments of the filing fees from his prison account. The court ordered:

Appellant must pay \$455.00 to the clerk of the district court. His custodian shall, within thirty days of the date of this order, deduct and pay to the clerk of the United States District Court for the District of Kansas an amount equal to 20 percent of the greater of —

- A) the average monthly deposits to his account, or
- B) the average monthly balance in his account for the 6-month period immediately preceding filing of the notice of appeal in this case.

In either event, appellant's custodian shall forward payments from appellant's account equal to 20 percent of the preceding month's income each time the account exceeds \$10.00 until the filing fees are paid in full.

(Dkt. No. 251, at 1-2).

Murray has recently filed an Objection to this court's Order of December 14, stating that he submitted a request for the payment of \$5.40 from his prison account to fulfill the initial partial filing fee, but that the request was returned with a notation indicating "Insufficient Funds," and has submitted an Inmate Account Statement showing a cash balance of \$27.11 in Murray's savings account, coupled with a statement of "Money Owed" which lists charges against Murray's account in the amount of \$76.33 for postage, \$30.03 for fees, \$10.00 for fines, and \$371.78 marked "Oth[er] Obl[igations]."

The court's prior order was predicated upon a prior Account Statement which showed no charges against Murray's savings. Even if the actual usable balance of savings is zero, the court must still assess an initial partial filing fee pursuant to 28 U.S.C. § 1915. Under § 1915(b)(2), the court must assess such an initial partial filing fee reflecting the greater of twenty percent of either the average monthly account balance for the previous six months, or the average of the deposits to the account for the previous six months. Although the actual balance of Murray's account is essentially zero, the latest Account Statement submitted to the court shows average monthly deposits in the amount of \$9.22 in the preceding six months. Accordingly, the court's previous order is hereby modified and the defendant is required to submit an initial partial filing fee in the amount of \$1.50, twenty percent of the average monthly deposit rounded down to the nearest half dollar.

IT IS ACCORDINGLY ORDERED this 6th day of February, 2007, that the defendant's Objection to Order is granted as provided herein.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE