

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

KENNETH HEISTAND,

Plaintiff,

vs.

CIVIL ACTION
No. 05-3132-SAC

HAROLD COLEMAN, et al.,

Defendants.

ORDER

While confined as a pretrial detainee in the Southeast Kansas Regional Correctional Center in Fort Scott, Kansas, plaintiff filed a complaint under 42 U.S.C. § 1983 seeking relief on six claims. By an order dated March 7, 2006, the court dismissed claims one through five as stating no claim for relief, 28 U.S.C. § 1915A(b)(1), and granted plaintiff an opportunity to amend the complaint to avoid dismissal of claim six.

In response plaintiff filed a notice of appeal from the dismissal of his first five claims, notwithstanding the court's failure to enter an order that an immediate appeal from the partial dismissal of plaintiff's complaint was warranted. See Fed.R.Civ.P. Rule 54(b). Plaintiff did not prepay the \$255.00 filing fee for his appeal.

Pursuant to 28 U.S.C. § 1915(b)(1), plaintiff must pay the full appellate court filing fee. If granted leave to proceed in forma pauperis on appeal, plaintiff is entitled to pay this fee over time by payment of an initial partial appellate filing fee assessed by the court, 28 U.S.C. § 1915(b)(1), and through automatic payments from his inmate trust fund account, 28 U.S.C. § 1915(b)(2). Because

any funds advanced to the court by plaintiff must first be applied to plaintiff's outstanding fee obligation,¹ the court grants plaintiff leave to proceed in forma pauperis on appeal without payment of an initial partial appellate filing fee. Once this prior fee obligation has been satisfied, however, payment of the full appellate filing fee is to proceed under 28 U.S.C. § 1915(b)(2).

The record discloses that plaintiff filed no amended complaint, thus claim six remains subject to being dismissed by the court for the reasons stated in the order entered on March 7, 2006. The failure to file an amended complaint within the additional time granted herein may result in this final claim being dismissed without prejudice.

IT IS THEREFORE ORDERED that plaintiff is granted leave to proceed in forma pauperis on appeal.

IT IS FURTHER ORDERED that plaintiff is granted twenty (20) days to amend claim six to identify the defendants involved in this claim, and to set forth each defendant's personal participation in the alleged misconduct.

IT IS SO ORDERED.

DATED: This 27th day of April 2006 at Topeka, Kansas.

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

¹Heistand v. Coleman, Case No. 05-3132-SAC (remainder of \$250.00 district court filing fee).