

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

JIMMY L. LOGSDON,

Plaintiff,

v.

CASE NO. 05-3276-SAC

ROBERT SAPIEN, et al,

Defendants.

**ORDER**

This civil rights complaint is currently before the court upon plaintiff's pending motion for leave to proceed in forma pauperis (Doc. 2), and plaintiff's letter treated as his motion for return or application of \$95 submitted by him to pay filing fees in another case (Doc. 4).

On initial screening, the court found plaintiff was required under 28 U.S.C. 1915(b)(1) to submit to the Clerk of the Court an initial partial filing fee of \$77.50. Plaintiff has since submitted the partial fee, and his motion for leave to proceed in forma pauperis is granted herein.

Pursuant to Section 1915(b)(1), notwithstanding the granting of plaintiff's in forma pauperis motion, he "shall be required to pay the full amount of a filing fee." The district court filing fee in this civil action is \$250. 28 U.S.C. 1915(b)(2) provides:

After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in

the account exceeds \$10 until the filing fees are paid.

Plaintiff could therefore have paid the remainder of the filing fee due in this case over time through payments from his inmate trust fund account<sup>1</sup> as authorized by Section 1915(b)(2).

Plaintiff recently submitted to the court a check for \$95, which was applied as another partial payment to the outstanding balance owed on the filing fee in this action. Plaintiff thereafter wrote to the Clerk of the Court that he "sent a payment of \$95 on August 12<sup>th</sup> 2005 for" Case No. 05-3228, and instead it was applied to Case No. 05-3276. He incorrectly states he owes nothing more in his case, and requests return of the \$95 if the court is not going to credit it to Case No. 05-3228.

Case No. 05-3228 is a 1983 action<sup>2</sup> filed by Terrance Kelly, another inmate at El Dorado Correctional Facility, raising claims similar to those raised by Logsdon in this action. Any funds advanced to the court directly from plaintiff were properly applied by the Clerk to plaintiff's outstanding fee obligations only. Moreover, since these funds were possessed by plaintiff and submitted by him for the partial payment of filing fees, the court has properly collected them as

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Pursuant to 28 U.S.C. 1915(b)(2), the Finance Office of the facility where plaintiff is confined is directed by a copy of this order to collect twenty percent (20%) of the prior month's income each time the amount in plaintiff's account exceeds ten dollars (\$10.00) until the filing fee has been paid in full. Plaintiff is directed to cooperate fully with his custodian in authorizing disbursements to satisfy the filing fee, including but not limited to providing any written authorization required by the custodian or any future custodian to disburse funds from his account.

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While there is an outstanding balance owed for the filing fee in Kelly's case, it is less than \$95.

a partial payment of the filing fee in his pending action. See 28 U.S.C. 1915(b)(1). Accordingly, plaintiff's request that the sum of \$95 be either applied as a partial payment in another inmate's case or returned to him is denied.

IT IS THEREFORE BY THE COURT ORDERED that plaintiff's motion for leave to proceed in forma pauperis (Doc. 2) is granted.

IT IS FURTHER ORDERED that plaintiff's motion for return or application of \$95 submitted by him to pay filing fees in another case (Doc. 4) is denied.

Copies of this order shall be transmitted to plaintiff and to the Finance Officer where plaintiff is currently confined.

**IT IS SO ORDERED.**

Dated this 18th day of August, 2005, at Topeka, Kansas.

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