

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

LORANZY V. BENNETT,

Plaintiff,

vs.

CIVIL ACTION
No. 05-3446-SAC

LOUIS E. BRUCE, et al.,

Defendants.

ORDER

Plaintiff proceeds pro se on a complaint filed under 42 U.S.C. § 1983, and seeks leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

By an order dated December 15, 2005, the court directed plaintiff to pay an initial partial filing fee of \$57.00. See 28 U.S.C. § 1915(b)(1)(when a prisoner brings a civil action or appeal in forma pauperis, the court is to assess an initial partial filing fee of 20 percent of the greater of the average monthly deposits to the prisoner's account, or the average monthly balance in the prisoner's account for the six month period preceding the filing of the complaint or appeal).

In response, plaintiff claims he is unable to pay this assessed fee, and states the average monthly balance information used by the court is based on a mandatory savings account which is purportedly not available to pay court filing fees. Plaintiff argues he should thus be entitled to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(b)(4), which provides that a

prisoner is not to be prohibited from bringing a civil action where the prisoner has no means to pay the initial partial filing fee assessed by the court. Alternatively, plaintiff seeks a court order requiring payment of the initial partial filing fee¹ from plaintiff's mandatory savings.

The court declines both requests. Under the circumstances set forth by plaintiff, the court finds it appropriate to reassess the initial partial filing fee required under 28 U.S.C. § 1915(b)(1), based on the average deposit to plaintiff's inmate account for the six month period prior to plaintiff's filing of the instant complaint.

To proceed in forma pauperis in this matter, plaintiff is directed to pay an initial partial filing fee of \$19.50, which is twenty percent of the average monthly deposit to plaintiff's inmate trust fund account, rounded to the lower half dollar. Plaintiff remains obligated to pay the remainder of the \$250.00 district court filing fee in this civil action through payments from his inmate trust fund account as authorized by 28 U.S.C. §

¹The initial partial filing fee originally assessed by the court was \$57.00. Plaintiff, however, seeks a court ordered payment of \$155.00 from his mandatory savings, referring to this amount as the full fee required for filing his action in this court. This is not accurate.

Plaintiff is advised that 28 U.S.C. § 1914(a), as amended in 2004, requires a party to pay a district court filing fee of \$250.00. The \$5.00 fee requirement in § 1914(a) for filing a habeas action does not apply to this non-habeas case. Nor does the \$5.00 fee required by 28 U.S.C. § 1917 apply because that fee must be paid to the district court only upon the filing of a notice of appeal or a petition for writ of certiorari.

1915(b)(2).

IT IS THEREFORE ORDERED that within thirty (30) days, plaintiff shall submit an initial partial filing fee of \$19.50. Any objection to this order must be filed on or before the date payment is due. The failure to pay the fees as required herein may result in the dismissal of this action without prejudice.

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

IT IS SO ORDERED.

DATED: This 24th day of January 2006 at Topeka, Kansas.

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