

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

THOMAS E. EVERSON,

Plaintiff,

v.

CASE NO. 06-3253-SAC

RAY ROBERTS, et al.,

Defendants.

O R D E R

This matter is before the court on a civil complaint filed under 42 U.S.C. § 1983 by an inmate confined in El Dorado Correctional Facility in El Dorado, Kansas. Also before the court is plaintiff's motion for leave to proceed in forma pauperis under 28 U.S.C. § 1915.

Pursuant to 28 U.S.C. § 1915(b)(1), the court is required to assess an initial partial filing fee of twenty percent of the greater of the average monthly deposits or average monthly balance in the prisoner's account for the six months immediately preceding the date of filing a civil action. Having examined the available record, the court assesses an initial partial filing fee of \$6.00, which is twenty percent of plaintiff's average monthly deposit, rounded to the lower half dollar.

Additionally, the court finds supplementation of the complaint is warranted. Plaintiff cites a state court action he filed in Butler County District Court on August 3, 2006, concerning the same facts and issues raised in the instant case. The court directs plaintiff to supplement the record as to the status of that state

court action, and to show cause why dismissal of the instant action without prejudice is not warranted. See Younger v. Harris, 401 U.S. 37 (1971)(narrowly proscribing federal injunctions and declaratory relief that interfere with on-going state criminal proceedings). See also Huffman v. Pursue, Ltd., 420 U.S. 592 (1975)(extending Younger doctrine to civil proceedings); Parkhurst v. Wyoming, 641 F.2d 775, 777 (1981)(extending Younger doctrine to § 1983 claim for damages). The failure to file a timely response may result in the complaint being dismissed without prejudice, and without further prior notice to plaintiff.

IT IS THEREFORE ORDERED that within thirty (30) days, plaintiff shall submit an initial partial filing fee of \$6.00. Any objection to this order must be filed on or before the date payment is due. The failure to pay this assessed fee may result in the dismissal of this action without prejudice.

IT IS FURTHER ORDERED that plaintiff is granted thirty (30) days to supplement the complaint to provide information regarding the status of plaintiff's state court case in Butler County District Court, and to show cause why the instant § 1983 complaint should not be dismissed 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 21st day of September 2006 at Topeka, Kansas.

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