

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

LOUIS G. GALLOWAY,

Plaintiff,

vs.

CIVIL ACTION  
No. 07-3045-SAC

LAWRENCE JOURNAL WORLD, et al.,

Defendants.

ORDER

This matter is before the court on a civil complaint filed under 42 U.S.C. § 1983 by a prisoner confined in the Douglas County Jail in Lawrence, 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), plaintiff must pay the full \$350.00 filing fee in this civil action. If granted leave to proceed in forma pauperis, plaintiff is entitled to pay this filing fee over time, as provided by payment of an initial partial filing fee to be assessed by the court under 28 U.S.C. § 1915(b)(1) and by the periodic payments from plaintiff's inmate trust fund account as detailed in 28 U.S.C. § 1915(b)(2). Because any funds advanced to the court by plaintiff or on his behalf must first be applied to plaintiff's outstanding fee obligation,<sup>1</sup> the court grants plaintiff leave to proceed in forma pauperis in the instant matter without

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<sup>1</sup>See Galloway v. Hadl, Case No. 07-3016-SAC (\$350.00 district court filing fee).

payment of an initial partial filing fee. Once this prior fee obligation has been satisfied, however, payment of the full district court filing fee in this matter is to proceed under 28 U.S.C. § 1915(b)(2).

Because plaintiff is a prisoner, the court is required to screen the complaint and to dismiss the complaint or any portion thereof that is frivolous, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant immune from such relief. 28 U.S.C. § 1915A(a) and (b).

In this action, plaintiff seeks declaratory judgment and damages on allegations that the Lawrence Journal World Newspaper published false information about him which caused the postponement of his jury trial and caused him mental anguish.

To state a claim for relief under 42 U.S.C. § 1983, "a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, *and must show that the alleged deprivation was committed by a person acting under color of state law.*" West v. Atkins, 487 U.S. 42, 48 (1988)(emphasis added). Plaintiff's allegations fail to satisfy these requirements.

The two defendants named in the complaint are the Lawrence Journal World Newspaper, and a person plaintiff identifies as a publisher of the newspaper. Clearly, neither of these defendants are persons "acting under color of state law" as required by § 1983. Because granting plaintiff an opportunity to amend the complaint would be futile to cure this deficiency, the court concludes the complaint should be summarily dismissed as stating no claim for

relief under § 1983.<sup>2</sup> See 28 U.S.C. § 1915(e)(2)(B)(ii) ("Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that...the action...fails to state a claim on which relief may be granted"); 28 U.S.C. § 1915A(b)(1)(court is to dismiss complaint or any claim that is frivolous, malicious, or fails to state a claim for relief).

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

IT IS FURTHER ORDERED that the complaint is dismissed as stating no claim for relief.

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 6th day of April 2007 at Topeka, Kansas.

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

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<sup>2</sup>Plaintiff is advised that dismissal of the complaint as stating no claim for relief counts as a "strike" under 28 U.S.C. 1915(g), a "3-strike" provision which prevents a prisoner from proceeding in forma pauperis in bringing a civil action or appeal if "on 3 or more prior occasions, while incarcerated or detained in any facility, [the prisoner] brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury."