

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

PATRICK ALAN THOMPSON,

Plaintiff,

vs.

DAVID MCKUNE, *et. al.*,

Defendants.

Case No. 07-3115-JTM

MEMORANDUM AND ORDER

Presently before the court is Patrick Thompson's (Thompson's) motion for leave to appeal *in forma pauperis* (Dkt. No. 15). For the reasons stated below, the court grants the motion.

Federal guidelines to proceed *in forma pauperis* are set forth in 28 U.S.C. § 1915(a). The statute provides:

any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor.

28 U.S.C. § 1915(a). The trial court has the discretion to grant or deny petitioner's request.

Cabrera v. Horgas, No. 98-4231, 1999 WL 241783, at * 1 (10th Cir. Apr. 23, 1999). In reviewing an *in forma pauperis* application, the court examines the applicant's inability to pay court costs. *See* 28 U.S.C. § 1915(a). There is a liberal policy toward permitting proceedings *in*

forma pauperis when necessary to ensure that the courts are available to all citizens, not just those who can afford to pay. *See Yellen v. Cooper*, 828 F.2d 1471 (10th Cir. 1987).

Pursuant to the Prison Litigation Reform Act (PLRA), a prisoner presenting a civil action must pay the full filing fee. *See* 28 U.S.C. § 1915(b)(1). If the prisoner does not have enough money to pay the filing fee for a complaint or an appeal, the court is required to collect an initial partial filing fee in the amount of 20 percent of the greater of the average monthly deposits to the inmate's account or the average monthly balance for the preceding six months. 28 U.S.C. § 1915(b)(1)(A) and (B). If the prisoner cannot pay the initial partial filing fee, the prisoner cannot be prohibited from bringing a civil action. 28 U.S.C. § 1915(b)(4). Under the Rules of Practice and Procedure for the District of Kansas:

In all cases in which petitioner, movant or plaintiff is an inmate of a penal institution and desires to proceed *in forma pauperis*, in addition to the affidavit of poverty required by 28 U.S.C. § 1915, he or she shall submit a certificate executed by an authorized officer of the institution in which he or she is confined stating the amount of money or securities on deposit to his or her credit in any account in the institution.

D.Kan. Rule 9.1(g).

Upon review of Thompson's account and poverty affidavit, the court is confident that his financial situation warrants a waiver of the normal filing fee, or the partial filing fee. As such, the court grants Thompson's motion.

IT IS ACCORDINGLY ORDERED this 10th day of April, 2008, that Thompson's motion for leave to appeal *in forma pauperis* (Dkt. No. 15) is granted.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE