

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

ROBERT GORDON PHILLIPS,

Plaintiff,

v.

CASE NO. 07-3169-SAC

KANSAS DEPARTMENT  
OF CORRECTIONS, et al.,

Defendants.

O R D E R

This civil rights complaint, 42 U.S.C. 1983, was filed by an inmate of the Ellsworth Correctional Facility, Ellsworth, Kansas (ECF). Plaintiff alleges that defendants delayed providing necessary medical treatment and provided inadequate medical treatment after he sustained multiple fractures to his jaw on the evening of Friday, January 12, 2007, while playing basketball in the ECF gym. Plaintiff seeks declaratory and injunctive relief as well as compensatory and punitive damages and costs.

PARTIAL FEE IMPOSED

Plaintiff has filed a Motion for Leave to Proceed in forma pauperis (Doc. 2), and has attached an Inmate Account Statement in support as statutorily mandated. Section 1915(b)(1) of 28 U.S.C., requires the court 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 of a civil action. Having examined the records of plaintiff's account, the court finds the average monthly deposit to plaintiff's account is \$40.20 and the average monthly balance is \$96.23. The court therefore assesses an initial partial filing fee of \$19.00, twenty percent of the average monthly balance, rounded to the lower half dollar<sup>1</sup>.

The court finds plaintiff's Motion for Appointment of Counsel (Doc. 3) should be denied at this juncture. Plaintiff is not entitled to counsel in this civil rights action, and appears to be capable of presenting factual allegations concerning his claims. The court further finds plaintiff's Motion for Preliminary Injunction (Doc. 4) should be denied because plaintiff has not alleged sufficient grounds for such relief. Both motions are denied without prejudice to plaintiff filing new motions later in this action.

**IT IS THEREFORE ORDERED** that plaintiff's motions to appoint counsel (Doc. 3) and for preliminary injunction (Doc. 4) are denied, without prejudice.

**IT IS FURTHER ORDERED** that plaintiff is granted thirty (30) days in which to submit to the court an initial partial filing fee of \$ 19.00. Any objection to this order must be filed on or before the date payment is due. The failure to pay the fees as required

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Pursuant to 28 U.S.C. §1915(b)(1), plaintiff remains obligated to pay the full \$350 district court filing fee in this civil action. Being granted leave to proceed in forma pauperis entitles him to pay the filing fee over time through payments deducted automatically from his inmate trust fund account as authorized by 28 U.S.C. §1915(b)(2).

herein may result in dismissal of this action without prejudice.

**IT IS SO ORDERED.**

Dated this 12th day of July, 2007, at Topeka, Kansas.

s/Sam A. Crow

U. S. Senior District Judge