

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ALBERT L. MITCHNER,

Plaintiff,

v.

CASE NO. 07-3173-SAC

WARDEN JAY SHELTON,
et al.,

Defendants.

O R D E R

This matter is before the court upon plaintiff's Motion for Leave to Proceed in forma pauperis (Doc. 2) and Motion to Appoint Counsel (Doc. 3). Having considered these motions, the court finds as follows.

Plaintiff initially did not file financial documents in support of his in forma pauperis motion as required by statute, and was ordered to do so by the court. He has since filed his Inmate Account Statement as a supplement to his motion. 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 has been \$25.51, and the average monthly balance has been \$5.63. The court therefore assesses an initial partial filing fee of \$5.00, twenty percent of the average monthly deposit, rounded to

the lower half dollar¹. Plaintiff must submit this initial partial filing fee to the court before the action may proceed further, and will be given time to do so.

Plaintiff has no right to appointment of an attorney in a civil rights action. Instead, the matter is within the court's discretion. The court finds that appointment of counsel is not warranted in this case at this time, and will deny the motion.

IT IS THEREFORE ORDERED that plaintiff is granted thirty (30) days in which to submit to the court an initial partial filing fee of \$ 5.00. Any objection to this order must be filed on or before the date payment is due. The failure to pay the fees as required herein may result in dismissal of this action without prejudice, and without further notice to plaintiff.

IT IS FURTHER ORDERED that plaintiff's Motion to Appoint Counsel (Doc. 3) is denied.

IT IS SO ORDERED.

Dated this 22nd day of February, 2008, at Topeka, Kansas.

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

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Pursuant to 28 U.S.C. §1915(b)(1), plaintiff remains obligated to pay the full \$350.00 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).