

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

NICHOLAS H. HENRY,

Plaintiff,

v.

CASE NO. 08-3198-SAC

OFFICER (FNU) BUSSELL,  
Kansas City, Kansas,  
Police Department,

Defendant.

O R D E R

This civil rights action, 42 U.S.C. § 1983, was filed by an inmate of the Douglas County Jail, Lawrence, Kansas. Plaintiff has also filed an Application to Proceed Without Prepayment of Fees (Doc. 2). He seeks money damages and other relief based upon allegations that on November 30, 2007, in Kansas City, Kansas, defendant used excessive force during a traffic incident, which resulted in plaintiff's back being broken in three places.

MOTION TO PROCEED WITHOUT PREPAYMENT OF FEES

28 U.S.C. § 1915 requires that a prisoner seeking to bring a civil action without prepayment of fees submit an affidavit described in subsection (a)(1), and a "certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing" of the action "obtained from the appropriate official of each prison at which the prisoner is or was confined." 28 U.S.C. § 1915(a)(2). Plaintiff alleges that "the institution" will not give him "a

transaction printout" and has attached instead a page showing an account balance on July 31, 2008, of \$51.01, but no transactions or balances over the last six months. 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 only record of plaintiff's account submitted by him, the court finds an initial partial filing fee cannot be assessed because there is no indication that sufficient funds are available at this time. However, pursuant to 28 U.S.C. §1915(b)(1), plaintiff remains obligated to pay the full \$350.00 district court filing fee due 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). Pursuant to §1915(b)(2), the Finance Office of the facility where plaintiff is confined is directed by copy of this Order to collect twenty percent (20%) of the prior month's income each time the amount in plaintiff's account exceeds ten dollars (\$10.00) until the filing fee has been paid in full. Plaintiff is directed to cooperate fully with his custodian in authorizing disbursements to satisfy the filing fee, including but not limited to providing any written authorization required by the custodian or any future custodian to disburse funds from his account.

**RESPONSE REQUIRED**

Because Mr. Henry is a prisoner, the court has initially

reviewed the complaint under 28 U.S.C. § 1915A(a) and (b). The court finds that a responsive pleading is required.

**IT IS THEREFORE ORDERED** that plaintiff's Application to Proceed Without Prepayment of Fees (Doc. 2) is granted.

**IT IS FURTHER ORDERED** that the clerk of the court shall prepare summons and waiver of service forms pursuant to Rule 4(d) of the Federal Rules of Procedure, to be served on defendant by a United States Marshal or a Deputy Marshal at no cost to plaintiff absent a finding by the court that plaintiff is able to pay such costs.

**IT IS FURTHER ORDERED** that the screening process under 28 U.S.C. § 1915A having been completed, this matter is returned to the clerk of the court for random reassignment pursuant to D.Kan.R. 40.1.

Copies of this Order shall be transmitted to plaintiff and to the Finance Officer at the institution where plaintiff is currently incarcerated.

**IT IS SO ORDERED.**

Dated this 29<sup>th</sup> day of August, 2008, at Topeka, Kansas.

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