

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

CHASE CORBIN COLLINS,

Plaintiff,

v.

CASE NO. 08-3212-SAC

GARY DANIELS, et al.,

Defendants.

O R D E R

This matter is before the court on the court's form complaint for filing under 42 U.S.C. § 1983. Plaintiff, a prisoner incarcerated in the Hutchinson Correctional Facility in Hutchinson, Kansas, proceeds pro se and seeks leave to proceed in forma pauperis under 28 U.S.C. § 1915 without prepayment of the district court filing fee.

*Motion for Leave to Proceed In Forma Pauperis*

Because plaintiff filed this action while he was a prisoner, he must pay the full \$350.00 filing fee in this civil action. See 28 U.S.C. § 1915(b)(1)(prisoner bringing a civil action or appeal in forma pauperis is required to pay the full filing fee). 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 periodic payments from plaintiff's inmate trust fund account as authorized in 28 U.S.C. § 1915(b)(2).

Pursuant to 28 U.S.C. § 1915(b)(1), the court is required 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 provided, the court finds the average monthly deposit to plaintiff's account is \$84.90 and the average monthly balance is \$1.42. The court therefore assesses an initial partial filing fee of \$16.50, twenty percent of the average monthly deposit, rounded to the lower half dollar.

*Pending State Court Action*

Plaintiff states in his complaint that he previously sought relief on his claims in a state court case that is currently pending before the Kansas appellate courts. See Pawnee County District Court Case 07-CV-06 (dismissed April 23, 2008, *appeal pending*). Thus on the face of the complaint it appears there is an ongoing state court proceeding which implicates important state interests, and which affords an adequate forum to present plaintiff's federal claims. Accordingly, the court directs plaintiff to show cause why this federal action should not be dismissed without prejudice pursuant to the abstention doctrine in Younger v. Harris, 401 U.S. 37 (1971).<sup>1</sup> Plaintiff is advised that the failure to file a timely response may result in the complaint being dismissed without prejudice without further prior notice to plaintiff.

Plaintiff's motion for appointment of counsel is denied without prejudice to plaintiff renewing this request if the complaint is not summarily dismissed for the reasons stated herein by the court.

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<sup>1</sup>See Parkhurst v. Wyoming, 641 F.2d 775, 777 (10th Cir. 1981)(extending Younger abstention doctrine to § 1983 claim for damages).

IT IS THEREFORE ORDERED that within thirty (30) days, plaintiff shall submit an initial partial filing fee of \$16.50. 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 the dismissal of this action without prejudice.

IT IS FURTHER ORDERED that plaintiff is granted thirty (30) days to show cause why the complaint should not be dismissed without prejudice pursuant to the abstention doctrine.

IT IS FURTHER ORDERED that plaintiff's motion for appointment of counsel (Doc. 3) is denied without prejudice.

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 8th day of October 2008 at Topeka, Kansas.

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