

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

MONTGOMERY CARL AKERS,

Plaintiff,

v.

CASE NO. 09-3280-SAC

KATHRYN H. VRATIL, et al.,

Defendants.

O R D E R

This matter is before the court on Bivens complaint filed pro se by a prisoner currently incarcerated in a federal facility in Florence, Colorado. Also before the court is plaintiff's motion for leave to proceed in forma pauperis under 28 U.S.C. § 1915 without prepayment of the \$350.00 district court filing fee. Plaintiff seeks damages and declaratory relief on allegations of concerted misconduct by a United States District Court judge and a Special Assistant United States attorney to violate plaintiff's constitutional rights and secure plaintiff's conviction on federal criminal charges.

The Prison Litigation Reform Act of 1996 substantially altered the manner in which indigent prisoners may proceed in the United States District Courts. Significant to the present case, § 1915(g) now provides that:

"In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which

relief may be granted, unless the prisoner is under imminent danger of serious physical injury."

28 U.S.C. § 1915(g).

Having reviewed plaintiff's litigation in the federal courts, the court finds plaintiff is now subject to the "3-strike" provision in § 1915(g).<sup>1</sup> The court has also examined the instant complaint and finds no basis to conclude that plaintiff could satisfy the § 1915(g) imminent harm exception in this case. Accordingly, plaintiff may proceed in this matter only if he pays the full \$350.00 district court filing fee.

IT IS THEREFORE ORDERED that plaintiff's motion for leave to proceed in forma pauperis (Doc. 2) is denied, and that plaintiff is granted thirty (30) days from the date of this order to submit the \$350.00 district court filing fee. The failure to pay the full filing fee by that deadline will result in the dismissal of this action without prejudice.

**IT IS SO ORDERED.**

DATED: This 28th day of January 2010 at Topeka, Kansas.

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

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<sup>1</sup>See Akers v. Watts, 589 F.Supp.2d 12 (D.D.Columbia 2008)(identifying two strikes); Akers v. Rukosek, Case No. 09-472-DMS (S.D.Cal. April 28, 2009)(dismissed as a frivolous duplicative action), *appeal dismissed* (9th Cir. December 4, 2009); and Akers v. Poisson, 2009 WL 1375167 (D.Me. 2009)(dismissed as stating no claim for relief). See also Akers v. Crow, Case No. 09-3037-RDR (dismissed as frivolous)(D.Kan. March 2, 2009), *affirmed* (10th Cir. August 28, 2009).