

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JOSE GARZA,

Plaintiff,

v.

CASE NO. 10-3140-SAC

L.S.H. ISAAC RAY,
et al.,

Defendants.

O R D E R

On March 22, 2011, this court entered what was essentially a second screening order in this case granting plaintiff time to submit an initial partial filing fee of \$52.50 or object to the assessed fee. Plaintiff was also granted additional time to file an Amended Complaint upon court-provided forms that cured the deficiencies discussed in that Order. Since that Order was entered, plaintiff has filed an Amended Complaint (Doc. 9). He has not, however, complied with the court's Order to pay the assessed initial partial filing fee. The court finds that this action must be dismissed on account of plaintiff's failure to comply with the court's orders regarding the statutory filing fee.

In its Order dated March 22, 2011, the court found and ruled as follows:

Despite being ordered to do so, Mr. Garza has not submitted a "certified copy" of his inmate account showing all transactions to his account for the full six-month period immediately preceding the filing of his complaint (footnote omitted). That statement should be for the months of January through June, 2010. Instead he provides financial

data for only two of those months, January and June 2010. He has also failed to file a complete financial affidavit, which he was directed to do by submitting his motion to proceed in forma pauperis upon court-approved forms. The court relies upon the scant information provided to find as follows. . . . Having examined the records of plaintiff's account, the court finds the average monthly balance for the two months that information is provided was \$262.80, while the average monthly deposit was much less. The court therefore assesses an initial partial filing fee of \$ 52.50, twenty percent of the average monthly balance, rounded to the lower half dollar. Plaintiff must pay this initial partial filing fee before this action may proceed further, and will be given time to submit the fee to the court. His failure to submit the initial fee in the time allotted may result in dismissal of this action without further notice.

Plaintiff did not adequately respond to this Order. He neither paid the initial partial filing fee in the time allotted nor filed an objection to the court's assessment of an initial partial filing fee of \$52.50. All he did was attach to his Amended Complaint (Doc. 9) uncertified copies of pages entitled "Kansas Department of Corrections Current Bank Status." These pages contain uncertified financial information for September 22, 2010, through March 29, 2011. Mr. Garza has provided no additional financial information for the appropriate time period, which is the six-month period immediately preceding the filing of this complaint. He was previously informed that the required financial information was for January through June of 2010 because his complaint was filed on July 2, 2010. It follows that plaintiff has provided no basis for this court to reassess its determination of the initial partial filing fee amount. Nor has he stated any facts to suggest that the

fee assessment should be reconsidered. The court dismisses this action, without prejudice, due to plaintiff's failure to comply with the court's Order of March 22, 2011, by submitting or objecting to the assessed initial partial filing fee within the time allotted by the court and his failure to meet the statutory filing fee prerequisites in this case.

IT IS THEREFORE ORDERED that this action is dismissed, without prejudice, on account of plaintiff's failure to comply with the court's order entered March 22, 2011, and plaintiff's failure to submit the assessed initial partial filing fee.

IT IS FURTHER ORDERED that plaintiff's Motion for Leave to Proceed in forma pauperis (Doc. 2) is denied for failure to submit the initial partial filing fee as ordered.

IT IS SO ORDERED.

Dated this 26th day of April, 2010, at Topeka, Kansas.

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