

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

CHRISTOPHER WAYNE BOWMAN and
MIKEAL GLENN STINE

Plaintiffs,

v.

CASE NO.11-3047-SAC

FEDERAL BUREAU OF PRISONS, et al.,

Defendants.

11-3096-SAC

O R D E R

This matter comes before the court on a pro se complaint submitted by two prisoners incarcerated in a federal penitentiary in Florence, Colorado, naming the Federal Bureau of Prisons (BOP) and BOP Regional Director Michael K. Nalley as defendants. Both plaintiffs signed the complaint as supplemented. The \$350.00 district court filing fee has not been paid, and neither plaintiff has submitted a motion for leave to proceed in forma pauperis without prepayment of that filing fee.

A prisoner seeking relief in any civil action submitted to the federal court must pay the full district court filing fee. 28 U.S.C. § 1915(b)(1). The circuit courts are split on the impact of this statutory requirement when a case involves multiple prisoner plaintiffs, and this remains an open question in this circuit. See *Woodruff v. Wyoming*, 49 Fed.Appx 199, 202 n.1 (10th Cir.2002) (unpublished) (recognizing circuit disagreement and citing cases). This court has held that multiple prisoner plaintiffs are each responsible for paying the full district court filing fee, and

must proceed in separate actions. See *Hershberger v. Evercom, Inc.*, Case No. 07-3152-SAC, 2008 WL 45693 (D.Kan., Jan. 2, 2008) (unpublished); *Horton v. Evercom, Inc.*, Case No. 07-3183-SAC, 2008 WL 45738 (D.Kan., Jan. 2, 2008) (unpublished).

The court thus directs the clerk's office to dismiss Mikeal Glenn Stine as a plaintiff in the present action, and to create a new case with Mikeal Glenn Stine as the sole plaintiff using copies of this order and the pleadings filed thus far in the instant record.

Unless any plaintiff elects to file a notice of voluntary dismissal in his separate case, each plaintiff is granted twenty (20) days to pay the \$350.00 filing fee or to submit an executed and properly supported form motion for seeking leave to proceed in forma pauperis under 28 U.S.C. § 1915.¹ The failure to do so in a timely manner may result in the dismissal of that case without prejudice, and without further prior notice to the plaintiff in that action.

IT IS THEREFORE ORDERED that the plaintiff Mikeal Glenn Stine is dismissed from the instant complaint, and that the clerk's office is to create a separate case with Mikeal Glenn Stine as the sole plaintiff, using copies of this order and the pleadings filed in the instant action.

IT IS FURTHER ORDERED that each plaintiff in the two separate cases is granted twenty (20) days to pay the \$350.00 filing fee in

¹See D.Kan. Rule 9.1(g) (court form to be used by prisoner seeking leave to proceed in forma pauperis). See also 28 U.S.C. § 1915(a)(2) (a prisoner must also submit a certified copy of his or her institutional account for the six months immediately preceding the filing of the action, from an appropriate official from each prison in which the inmate is or was incarcerated).

their separate case, or to submit a form motion for seeking leave to proceed in forma pauperis under 28 U.S.C. § 1915.

The clerk's office is to provide each plaintiff with a form motion for filing under 28 U.S.C. § 1915.

IT IS SO ORDERED.

DATED: This 10th day of May 2011 at Topeka, Kansas.

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