

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

BRUCE E. COLE,)
)
Plaintiff,)
)
v.) No. 4:07-CV-1669-RWS
)
STATE OF MISSOURI, et al.,)
)
Defendants.)

MEMORANDUM AND ORDER

This matter is before the Court upon the application of Bruce E. Cole (registration no. N/A) for leave to commence this action without payment of the required filing fee.

28 U.S.C. § 1915(b)(1)

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action in forma pauperis is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account; or (2) the average monthly balance in the prisoner's account for the prior six month period. See 28 U.S.C. § 1915(b)(1). After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. See 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing

fee is fully paid. Id.

Plaintiff has submitted a certified copy of his prison account statement for the six-month period immediately preceding the submission of his complaint. See 28 U.S.C. § 1915(a)(1), (2). A review of plaintiff's account statement indicates an average monthly deposit of \$51.92, and an average monthly account balance of \$00.00. Plaintiff has insufficient funds to pay the entire filing fee. Accordingly, the Court will assess an initial partial filing fee of \$10.83, which is 20 percent of plaintiff's average monthly deposit.

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis at any time if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is frivolous if "it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989). An action fails to state a claim upon which relief can be granted if it does not plead "enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1974 (2007).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. Denton

v. Hernandez, 504 U.S. 25, 32 (1992); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

The complaint

Plaintiff, an inmate at the Warren County Regional Jail in Bowling Green, Kentucky, seeks injunctive relief in this 42 U.S.C. § 1983 action against defendants State of Missouri and the Missouri State Board of Probation and Parole.

Having carefully reviewed the complaint, the Court is unable to determine with any degree of certainty what claims plaintiff is attempting to assert in the instant action. The complaint contains no specific allegations linking defendants to any deprivation of plaintiff's constitutional rights, and plaintiff has advanced no claims supporting his request for a preliminary injunction.

The Federal Rules of Civil Procedure require litigants to formulate their pleadings in an organized and comprehensible manner. Even pro se litigants are obligated to plead specific facts and must abide by the Federal Rules of Civil Procedure; however, plaintiff has failed to do so in this case. See U.S. v. Wilkes, 20 F.3d 651, 653 (5th Cir. 1994); Boswell v. Honorable Governor of Texas, 138 F.Supp.2d 782, 785 (N.D.Texas 2000); Fed.R.Civ.P. 8(a)(2) (complaint should contain "short and plain statement" of claims); Fed.R.Civ.P. 8(e)(2) (each claim shall be "simple, concise, and direct"). Thus, although plaintiff is proceeding pro se and in forma pauperis, the Court will not instruct him to file an amended complaint. Plaintiff's claims are legally frivolous and/or fail to state a claim upon which relief

may be granted, and dismissal without prejudice is warranted based on his failure to provide an intelligible complaint in compliance with the Federal Rules of Civil Procedure. Cf. Boswell v. Honorable Governor of Texas, 138 F.Supp.2d at 785-86 (dismissing pro se plaintiff's pleadings; Court could not determine nature of claims without resorting to improper speculation).

In accordance with the foregoing,

IT IS HEREBY ORDERED that plaintiff's motion for leave to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that the plaintiff shall pay an initial partial filing fee of \$10.83 within thirty (30) days from the date of this order. Plaintiff is instructed to make his remittance payable to "Clerk, United States District Court," and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint, because the

complaint is legally frivolous and fails to state a claim upon which relief may be granted. See 28 U.S.C. § 1915(e)(2)(B).

An appropriate order shall accompany this order and memorandum.

Dated this 1st day of November, 2007.


UNITED STATES DISTRICT JUDGE