

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Kinsey v. Pasha

No. 25-cv-01225-BEN-DDL (S.D. Cal. May 16, 2025) · No. 25-cv-01225-BEN-DDL · Decided May 16, 2025

SUMMARY

The United States District Court for the Southern District of California dismissed Charles Kinsey’s § 1983 action without prejudice because he neither paid the required civil filing and administrative fee nor properly moved to proceed in forma pauperis. The court granted him 45 days to reopen the case by paying the fee or filing a compliant IFP motion and declaration. The order cautioned that any reopened complaint would remain subject to statutory screening.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 CHARLES KINSEY, Case No.: 25-cv-01225-BEN-DDL CDCR #P-4738,
12 ORDER DISMISSING CIVIL Plaintiff, 13 ACTION FOR FAILURE TO PAY vs. FILING
FEES REQUIRED BY 14 28 U.S.C. § 1914(a) AND/OR FOR SUSAN PASHA, Nurse
Practitioner; 15 FAILURE TO PROPERLY MOVE HALL, ADA Coordinator; CDCR; TO
PROCEED IN FORMA 16 JOHN DOES 1-10, PAUPERIS PURSUANT TO 17 Defendants.

28 U.S.C. § 1915(a) 18 19 Plaintiff Charles Kinsey, currently incarcerated at Richard J. Donovan
Correctional 20 Facility (“RJD”) in San Diego, California, and proceeding pro se, has filed a civil
rights 21 complaint pursuant to 42 U.S.C. § 1983. (See ECF No. 1.) Plaintiff, who is vision 22
impaired, seeks to sue the California Department of Corrections and Rehabilitation and 23 several
RJD officials for failing to maintain the pavement on a path leading to the prison’s 24 education
facility.

As a result, Plaintiff alleges the wheels of his walker got caught in a 25 pavement crack, he fell,
and was denied adequate medical attention after. (Id. at 3–5.) 26 FAILURE TO PAY FILING FEE
OR REQUEST IFP STATUS 27 All parties instituting any civil action, suit or proceeding in a
district court of the 28 United States, except an application for writ of habeas corpus, must pay a
filing fee of 1 \$405.

See 28 U.S.C. § 1914(a). The action may proceed despite a plaintiff’s failure to 2 prepay the entire
fee only if he is granted leave to proceed in forma pauperis (“IFP”) 3 pursuant to 28 U.S.C. §
1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 4 2007) (“*Cervantes*”);
Rodriguez v. Cook, 169 F.3d 1176, 1177 (9th Cir. 1999).

However, 5 a prisoner who is granted leave to proceed IFP remains obligated to pay the entire fee in 6 “increments” or “installments,” *Bruce v. Samuels*, 577 U.S. 82, 84 (2016); *Williams v. 7 Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), and regardless of whether his action is 8 ultimately dismissed. See 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 9 844, 847 (9th Cir.

2002). 10 Section 1915(a)(2) requires all persons seeking to proceed without full prepayment 11 of fees to submit an affidavit that includes a statement of all assets possessed and which 12 demonstrates an inability to pay. See *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th 13 Cir. 2015) (emphasis added).

In support of this affidavit, prisoners like Plaintiff must also 14 submit a “certified copy of the trust fund account statement (or institutional equivalent) for 15... the 6-month period immediately preceding the filing of the complaint.” 28 U.S.C. 16 § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). It is from the certified 17 trust account statement that the Court assesses an initial payment of 20% of (a) the average 18 monthly deposits in the account for the past six months, or (b) the average monthly balance 19 in the account for the past six months, whichever is greater, unless he has no assets.

See 20 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody of the 21 prisoner then collects subsequent payments, assessed at 20% of the preceding month’s 22 income, in any month in which his account exceeds \$10, and forwards those payments to 23 the Court until the entire filing fee is paid. See 28 U.S.C. § 1915(b)(2); *Bruce*, 577 U.S. at 24 85–86.

25 Plaintiff did not pay the filing fee required to commence a civil action when he filed 26 his Complaint, nor has he filed a Motion to Proceed IFP, which includes both the affidavit 27 required by 28 U.S.C. § 1915(a)(1) and the certified copies of his trust funds account 28 statements required by 28 U.S.C. § 1915(a)(2). While RJD has submitted two separate 1 prison certificates and CDCR records of Plaintiff’s inmate trust account activity on his 2 behalf, see ECF Nos. 2, 3, this accounting, unless accompanied by a motion and affidavit 3 submitted by Plaintiff himself, is insufficient. “The in forma pauperis statute authorizes 4 courts to allow ‘[1] the commencement, prosecution or defense of any suit, action or 5 proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or 6 security therefor, by a person who [2] makes affidavit that he is [3] unable to pay such costs 7 or give security therefor.’” *Rowland v. California Men’s Colony, Unit II Men’s Advisory 8 Council*, 506 U.S. 194, 214 (1993) (quoting 28 U.S.C. § 1915(a)). “Section 1915(a) thus 9 contemplates that the [person] who is entitled to the benefits of the provision will have 10 three characteristics: He will have the capacity to sue or be sued, to make an affidavit, and 11 to be unable to pay court costs.” *Id.* “Such affidavit shall [also] state the nature of the 12 action,... and affiant’s belief that [he] is entitled to redress.” 28 U.S.C. § 1915(a) (1).

13 “When a claim of poverty is made under section 1915 ‘it is proper and indeed essential for 14 the supporting affidavits to state the facts as to affiant’s poverty with some particularity, 15 definiteness and certainty.’” *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) 16 (quoting *Jefferson v. United States*, 277 F.2d 723, 725 (9th Cir. 1960)).

17 Therefore, unless Plaintiff either pays the filing fee “upfront,” *Bruce*, 577 U.S. at 86, 18 or files a properly supported Motion to Proceed IFP that includes the affidavit required by 19 28 U.S.C. § 1915(a)(1), his case cannot proceed. See 28 U.S.C. § 1914(a); *Cervantes*, 493 F.3d at 1051. 21 CONCLUSION 22 Accordingly, the Court: 23 (1) DISMISSES this action without prejudice based on Plaintiff’s failure to pay 24 the \$405 civil filing and administrative fee required by 28 U.S.C. § 1914(a), and his failure 25 to properly move to proceed IFP pursuant to 28 U.S.C. § 1915(a); 26 (2) GRANTS Plaintiff forty-five (45) days leave from the date of this Order to 27 re-open this case by: (a) prepaying the entire \$405 civil filing and administrative fee 28 required by 28 U.S.C. § 1914(a) in full; or (b) completing and filing a Motion and 1 }Declaration in Support of Motion to Proceed IFP that complies with 28 U.S.C. 2 1915(a)(1), (2) and S.D.

Cal. CivLR 3.2.b; and 3 (3) DIRECTS the Clerk of the Court to provide Plaintiff with a Court-approved 4 ||form “Motion and Declaration in Support of Motion to Proceed IFP” for his use and 5 }convenience. Should Plaintiff neither pay the \$405 filing fee in full nor sufficiently 6 ||complete and file the attached Motion and Declaration to Proceed IFP within 45 days, this 7 ||civil action will remain dismissed without prejudice pursuant to 28 U.S.C. § 1914(a), 8 ||and without further Order of the Court.'

9 IT IS SO ORDERED. 10 || Dated: May 16, 2025 11 Hon. Roger T. Benitez United States District Judge 13 14 15 16 17 18 19 20 21 Plaintiff 1s cautioned that if he chooses to re-open the case by either prepaying the 99 full \$405 civil filing fee, or by submitting a properly supported Motion to Proceed IFP, his Complaint will be subject to an initial review and may be dismissed sua sponte pursuant to 23 U.S.C. § 1915A(b) and/or 28 U.S.C. § 1915(e)(2)(B), regardless of whether he pays the full filing fee at once, or is granted IFP status and is obligated to pay the full filing fee in installments.

See *Lopez v. Smith*, 203 F.3d 1122, 1126—27 (9th Cir. 2000) (en banc) (noting 25 28 U.S.C. § 1915(e) “not only permits but requires” the court to sua sponte dismiss an in forma pauperis complaint that is frivolous, malicious, fails to state a claim, or seeks 6 damages from defendants who are immune); see also *Rhodes v. Robinson*, 621 F.3d 1002, 27 || 1004 (9th Cir.

2010) (discussing similar screening required by 28 U.S.C. § 1915A of all 28 complaints filed by prisoners “seeking redress from a governmental entity or officer or employee of a governmental entity.”).

