

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

SCOTT WILLIAM DAVI,

Plaintiff,

vs.

DARRIN YOUNG, INDIVIDUAL CAPACITY;
ACTING WARDEN DOUG CLARK,
OFFICIAL CAPACITY;¹ WARDEN JESSICA
COOK, INDIVIDUAL AND OFFICIAL
CAPACITY; MEDICAL DIRECTOR MARY
CARPENTER, INDIVIDUAL AND OFFICIAL
CAPACITY; ASSOCIATE WARDEN TROY
PONTO, INDIVIDUAL AND OFFICIAL
CAPACITY; AND D-UNIT COORDINATOR
ANGELA PECHOUS, INDIVIDUAL AND
OFFICIAL CAPACITY;

Defendants.

4:21-CV-04160-RAL

ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO PROCEED
WITHOUT PREPAYMENT OF FEES AND
REQUIRING PLAINTIFF TO PAY AN
INITIAL PARTIAL FILING FEE

Plaintiff Scott William Davi filed a pro se lawsuit under 42 U.S.C. § 1983. Doc. 1. Davi is a prisoner at the South Dakota State Penitentiary. *Id.* at 1. He filed a motion for leave to proceed without prepayment of fees and provided the Court with his prisoner trust account report. Docs. 2 and 3.

¹ Davi originally named Chief Warden Darin Young as a defendant in his individual and original capacity. Darin Young is no longer the South Dakota Secretary of Corrections Chief Warden. Under Federal Rule of Civil Procedure 25(d), “[a]n action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party.” Fed. R. Civ. P. 25(d). The current Acting Chief Warden is Doug Clark, who is automatically substituted for Darin Young in Davi's official capacity claim. Davi's individual capacity claim against Darin Young remains.

Under the Prison Litigation Reform Act (PLRA), a prisoner who “brings a civil action or files an appeal in forma pauperis . . . shall be required to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1). The Court may, however, accept partial payment of the initial filing fee where appropriate. Therefore, “[w]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceedings or over a period of time under an installment plan.” Henderson v. Norris, 129 F.3d 481, 483 (8th Cir. 1997) (alteration in original) (quoting McGore v. Wrigglesworth, 114 F.3d 601, 604 (6th Cir. 1997)).

The initial partial filing fee that accompanies an installment plan is calculated according to 28 U.S.C. § 1915(b)(1), which requires a payment of 20 percent of the greater of:

- (A) the average monthly deposits to the prisoner’s account; or
- (B) the average monthly balance in the prisoner’s account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

Davi has reported an average monthly balance for the past six months to his prisoner trust account of \$90.65 and an average monthly deposit of \$163.79. Doc. 3 at 1. Based on this information, the Court grants Davi leave to proceed in forma pauperis, but he must pay an initial partial filing fee of \$32.76 (20 percent of his average monthly deposit). Davi must pay the initial partial filing fee of **\$32.76 by November 1, 2021**. His failure to pay the filing fee by November 1, 2021, will result in the dismissal without prejudice of his complaint.

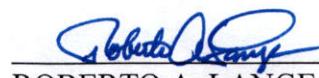
Accordingly, it is

ORDERED that Davi’s motion for leave to proceed without prepayment of fees, Doc. 2, is granted. Davi will make a payment of **\$32.76 by November 1, 2021**, made payable to the Clerk, U.S. District Court. If Davi does not pay the initial partial filing fee by November 1, 2021, his complaint will be dismissed without prejudice. The Court will conduct a 28 U.S.C. § 1915A screening after Davi pays his initial partial filing fee. It is finally

ORDERED that the institution having custody of Davi is directed that whenever the amount in Davi's trust account, exclusive of funds available to him in his frozen account, exceeds \$10.00, monthly payments that equal 20 percent of the funds credited the preceding month to Davi's trust account shall be forwarded to the U.S. District Court Clerk's Office under to 28 U.S.C. § 1915(b)(1), until the \$350 filing fee is paid in full.

DATED October 5th, 2021.

BY THE COURT:



ROBERTO A. LANGE
CHIEF JUDGE