

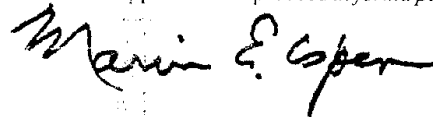
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United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	09 C 661	DATE	3/23/2009
CASE TITLE	Hernandez vs. Cook County Sheriff, et al		

DOCKET ENTRY TEXT

Because Hernandez failed to fully complete the financial affidavit, we deny his request to proceed *in forma pauperis*. If he plans to submit another financial affidavit for further review, he should carefully read and provide complete responses to questions 3, 4f, 7, and 10. Accordingly, we deny Hernandez's application to proceed *in forma pauperis*. (4).



■ [For further details see text below.]

Docketing to mail notices.

STATEMENT

(Reserved for use by the Court)

ORDER

Presently before us is Plaintiff Jaime Hernandez's application to proceed *in forma pauperis* in a lawsuit against various Cook County Sheriff Office Employees and other Cook County officials, which alleges various Constitutional and federal and state law violations. Before granting leave to file *in forma pauperis* under 28 U.S.C. § 1915, we must first determine whether Hernandez's allegation of poverty is untrue. If Hernandez satisfies the threshold requirement of alleging poverty, we must also conduct an initial review of his claims and dismiss the action if we find that (1) it is frivolous or malicious; (2) it fails to state a claim upon which relief may be granted under Federal Rule of Civil Procedure 12(b)(6); or (3) it seeks damages from a defendant who is immune from such relief. See 28 U.S.C. § 1915(e)(2)(A), (B)(i-iii). Pursuant to Rule 12(b)(6), we dismiss the complaint only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). Having reviewed Hernandez's proposed complaint, it is difficult to tell whether any non-frivolous claims lie therein. Even assuming such non-frivolous claims exist, however, we deny his motion for *in forma pauperis* based upon his financial affidavit as set forth below.

Regarding his allegation of poverty, Hernandez submitted a financial affidavit, which states that he has been unemployed since November 2008, and that he has received \$308.00 in unemployment over the past twelve months. Hernandez lists two names under the question asking Plaintiff to identify his dependants. However, Hernandez did not indicate his relationship with those listed, nor did he indicate whether he is responsible for supporting those people. Furthermore, although Hernandez states that he and his spouse "were separated," he also indicates that they are currently married, but does not disclose her salary. Additionally, Hernandez states that he owns a house, but does not provide its address. In response to questions asking the current value of the property, amount of monthly mortgage or loan payments, and the name of the person making the payments, Hernandez states that the questions are "NA," presumably meaning not applicable.

Based on the responses provided by Hernandez, we are unable to determine whether he satisfies § 1915's poverty requirement. Although Hernandez's personal income is below the \$10,400 poverty threshold for a single-

STATEMENT

person household (*see* Health and Human Services 2008 Poverty Guidelines), we must consider his spouse's income and assets, as well as his personal assets. *See Lee v. Wal-Mart Stores, Inc.*, No. 92 C 465, 1993 WL 316756, at *3 (N.D. Ind. Aug. 18, 1993) (citing *Bryant v. Whalen*, No. 88 C 4834, 1992 WL 198946, at *5 (N.D. Ill. Aug. 12, 1992)). Because Hernandez failed to fully complete the financial affidavit, we deny his request to proceed *in forma pauperis*. If he plans to submit another financial affidavit for further review, he should carefully read and provide complete responses to questions 3, 4f, 7, and 10.

Accordingly, we deny Hernandez's application to proceed *in forma pauperis*. It is so ordered.