

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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NATHANIEL ALLEN LINDELL,

Plaintiff,

v.

MATTHEW J. FRANK, Secretary of the Wisconsin Department of Corrections, JON E. LITSCHER, former Secretary of the Wisconsin Department of Corrections; CINDY O'DONNELL, Deputy Secretary to Litscher; JOHN RAY, Corrections Complaint Examiner ("C.C.E."); GERALD BERGE, Warden at Supermax Correctional Institution; PETER HUIBREGTSE, Deputy Warden of Supermax; LIEUTENANT JULIE BIGGAR, a Lt. at Supermax; ELLEN RAY, I.C.E.; SGT. JANTZEN; C.O. WETTER; C.O. S. GRONDIN; C.O. MUELLER; C.O. CLARK, all guards at Supermax; JOHN SHARPE, Manager Foxtrot Unit at Supermax; SGT. BOYELSON,

Defendants.

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Plaintiff has amended his notice of appeal from the October 28, 2004 judgment to include an appeal from this court's December 7, 2004 order denying his motion for modification of the August 23, 2004 injunction. For the record, this amendment is being

filed pursuant to Fed. R. App. P. 4(B)(ii) and therefore, no additional fee for filing the amended notice is required. Fed. R. App. P. 4(B)(iii).

With respect to plaintiff's original notice of appeal, this court has directed plaintiff to submit a trust fund account statement for the six-month period immediately preceding the filing of his notice of appeal so that a decision may be made whether to assess him an initial partial payment of the \$255 fee for filing the appeal or whether he may proceed without an initial partial payment pursuant to 28 U.S.C. § 1915(b)(4). In the order of December 7, I gave plaintiff until December 27 to submit his trust fund account statement. In his amended notice of appeal, plaintiff states that he is totally indigent "as the court knows." Separately, in connection with a new lawsuit plaintiff submitted recently, plaintiff submitted a trust fund account statement reflecting transactions occurring in December only. If plaintiff intended this portion of a trust fund account statement to respond to the December 7 order, it is unacceptable. It may be that this court has a general awareness that plaintiff is relying on legal loan funds to litigate his cases in this court. However, I cannot act on this undocumented supposition of plaintiff's financial well-being and ignore the procedure Congress established in § 1915 for determining a prisoner's indigent status. Therefore, I will extend slightly the deadline within which plaintiff is to submit a trust fund account statement for the six-month period immediately preceding the filing of his notice of appeal in this case.

ORDER

IT IS ORDERED that plaintiff may have an enlargement of time to January 14, 2005, in which to submit a trust fund account statement for the period beginning approximately June 2, 2004 and ending approximately December 2, 2004. If, by January 14, 2005, plaintiff fails to submit the required statement or show cause for his failure to do so, then I will deny his request for leave to proceed in forma pauperis on appeal on the ground that he has failed to show that he is entitled to indigent status on appeal.

Entered this 21st day of December, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge