

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

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MICHAEL L. WHITEHEAD,

Plaintiff,

v.

ORDER

02-C-0700-C

GARY McCAUGHTRY, JON E. LITSCHER,  
JOHN D. ASHCROFT and KATHLEEN  
HAWK SAWYER,

Defendants.  
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Judgment was entered in this case on February 10, 2003, denying plaintiff's motion for a preliminary injunction and dismissing the case as moot. Now plaintiff has filed a notice of appeal. Because the notice is not accompanied by the \$105 fee for filing his appeal, I construe plaintiff's notice to include a request for leave to proceed on appeal in forma pauperis.

Like plaintiff's request for leave to proceed in forma pauperis on his complaint, his request for leave to proceed in forma pauperis in forma pauperis on appeal is governed by the 1996 Prison Litigation Reform Act. This means that this court must determine first whether his request must be denied either because he has three strikes against him under 28

U.S.C. § 1915(g) or because the appeal is not taken in good faith. Plaintiff does not have three strikes against him, and I do not intend to certify that his appeal is not taken in good faith.

The only other hurdle to plaintiff's proceeding with his appeal in forma pauperis is the requirement that he be found indigent and, if he is indigent, that he pay an initial partial payment of the filing fee that has been calculated from a certified copy of his trust fund account statement for the six-month period immediately preceding the filing of his notice of appeal. 28 U.S.C. § 1915(a)(2). Plaintiff has not submitted the necessary trust fund account statement, but the trust fund account statement he submitted with his complaint is sufficiently recent that I will use it to calculate the initial partial payment on the \$105 fee plaintiff owes for filing his appeal. From the trust fund statement, I calculate plaintiff's initial partial payment to be \$12.72.

#### ORDER

IT IS ORDERED that plaintiff Michael L. Whitehead's request for leave to proceed in forma pauperis on appeal is GRANTED. Plaintiff may have until March 6, 2003, in which to submit a check or money order made payable to the clerk of court in the amount of \$12.72. If, by March 6, 2003, plaintiff fails to pay the initial partial payment or explain his failure to do so, then I will advise the court of appeals of his noncompliance in paying

the assessment so that it may take whatever steps it deems appropriate with respect to this appeal.

Entered this 13th day of February, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge