

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

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LEONARD LAMONT JONES,

Petitioner,

v.

KENNETH FARMER and  
KEVIN LINSMEIER,

Respondents.  
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MEMORANDUM

00-C-515-C

In an order entered herein on December 7, 2000, I denied petitioner Leonard Lamont Jones's motion for leave to proceed in forma pauperis on appeal from the judgment entered in this case. Because petitioner had not at that time filed a notice of appeal, I concluded that he did not have to pay the \$105 fee for filing a notice of appeal, as the 1995 Prison Litigation Reform Act would otherwise require. Before petitioner received the December 7 order, however, he filed a notice of appeal. This filing triggers his obligation to pay the \$105 fee for filing his appeal, despite the fact that his request for leave to proceed in forma pauperis on appeal has been denied and despite the fact that I have certified petitioner's appeal not to be taken in good faith.

A prisoner whose notice of appeal is certified as not having been taken in good faith cannot take advantage of the initial partial payment provision of § 1915. Instead, he owes the \$105 fee in full immediately, and if the money does not presently exist in his prison account, then prison officials are required to calculate monthly payments according to the formula set out in 28 U.S.C. § 1915(b)(2) and forward those payments to the court until the debt is satisfied. If the prisoner has sufficient funds in his regular account to pay the full \$105, it must be remitted promptly to the clerk of court in one payment. One exception exists. Petitioner may delay payment of the fee, whether in payments because of insufficient funds or in full, if he challenges in the court of appeals within thirty days of the date he receives the district court's order denying his request for leave to proceed in forma pauperis on appeal the district court's certification that the appeal is not taken in good faith. In that instance, the court of appeals may decide that the certification is improper, in which case the matter will be remanded to the district court for collection of an initial partial payment of the fee before the court of appeals will decide whether petitioner's appeal is legally frivolous. If the court of appeals determines that the district court was correct that the appeal is not taken in good faith, then the payment will once again be due in full immediately. Whatever the scenario, petitioner is responsible for insuring that the required sum is remitted to the court at the appropriate time. His failure to pay the fee for any reason other than destitution will be understood as a

relinquishment of his right to file future suits in forma pauperis. See Thurman v. Gramley, 97 F.3d 185, 188 (7th Cir. 1996). Petitioner is reminded that if he challenges this court's finding of bad faith in the court of appeals and loses, he may be assessed a second strike by the court of appeals if his appeal is found to be legally frivolous.

Entered this 12th day of December, 2000.

BY THE COURT:

BARBARA B. CRABB  
District Judge