

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

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HARRISON FRANKLIN, on behalf  
of himself and all those similarly situated,

Petitioners,

v.

GERALD BERGE, PETER HUIBREGTSE,  
BURTON COX, JR., NURSE VICKY,  
C/O MATHEW SCULLION, BRIAN KOOL,  
M. HARPER, TIM HAINES, SHARON  
ZUNKER, DR. DAVID BURNETT, JAMES  
GREER, ANTHONY BROADBENT,  
JOHN DOE/JANE DOE 1-100,

Respondents.  
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MEMORANDUM

05-C-251-C

On April 25, 2005, I denied petitioner's request for leave to proceed in forma pauperis in this action without prejudice to his refiling his case after he has paid the amounts of his arrears in case no. 02-C-618-C. Judgment of dismissal was entered on April 26, 2005. On May 4, 2005, petitioner filed a timely motion pursuant to Fed. R. Civ. P. 59 for relief from the judgment of dismissal. I denied that motion on May 19, 2005. Now petitioner has written a letter asking what step he should take next.

Petitioner has two options: pay up his past debt and move to reopen this case or ask

the Court of Appeals for the Seventh Circuit to review this court's decision to find him ineligible to proceed under 28 U.S.C. § 1915 because of his unpaid arrears. Fed. R. Civ. P. 24(a). Such review is permissible without petitioner's having to file a notice of appeal and incur another filing fee obligation (fees for filing appeals are \$255), so long as it is filed within 30 days of the order denying him pauper status. Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997), overruled in part on other grounds by Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000). I express no opinion whether petitioner's filing of a Rule 59 motion tolled the 30-day period. Only the court of appeals may consider whether petitioner's motion is timely.

If petitioner chooses to file a request for review of this court's decision to deny him pauper eligibility, he should not file a notice of appeal in addition to his Rule 24(a) motion, as such a notice will be deemed to establish his unconditional desire to appeal whether or not the court of appeals decides to defer the fee and he will irrevocably incur the obligation to pay the fee. Id. To file a proper motion under Fed. R. App. P. 24, petitioner must include with his motion a copy of this court's order denying him leave to proceed in forma pauperis.

Entered this \_\_\_\_\_ day of May, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge