

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

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STEVEN D. STEWART,

Plaintiff,

ORDER

v.

05-C-293-C

C.O. BARR,

Defendant.  
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As directed in this court's order of September 19, 2006, plaintiff Steven D. Stewart has submitted a certified copy of his trust fund account statement so that a determination may be made whether he is indigent for the purpose of proceeding on appeal in forma pauperis and if he is, what amount must be assessed under the 1996 Prison Litigation Reform Act as an initial partial payment of the fee for filing his appeal. (In the September 19 order, I found that plaintiff's appeal is not taken in bad faith and that he is not barred by the three strikes provision of 28 U.S.C. § 1915(g) from proceeding with his appeal in forma pauperis.)

From plaintiff's trust fund account statement, I find that he has maintained an average monthly balance in the amount of \$1,426.61, which is greater than his average

monthly income. Twenty percent of that amount is \$285.20. Because this amount is insufficient to pay the full amount of the \$455 filing fee, he qualifies for indigent status. Therefore, I assess plaintiff an initial partial payment of the \$455 fee for filing his appeal in the amount of \$285.20. Plaintiff may pay the remainder of the filing fee in monthly installments pursuant to 28 U.S.C. § 1915(b)(2).

Also, although plaintiff has not asked for a copy of the transcript of the trial proceedings in this case, I construe his request for leave to proceed in forma pauperis on appeal to include a motion for preparation of the trial transcript at government expense pursuant to 28 U.S.C. § 753(f). I conclude that without access to the trial transcript, it will be extremely difficult for the court of appeals to assess plaintiff's arguments on appeal. Therefore, the motion for preparation of the trial transcript at government expense pursuant to 28 U.S.C. §753(f) will be granted.

#### ORDER

IT IS ORDERED that plaintiff Steven Stewart's request for leave to proceed in forma pauperis on appeal is GRANTED. Plaintiff may have until October 25, 2006, in which to submit a check or money order made payable to the clerk of court in the amount of \$285.20. If, by October 25, 2006, 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.

Further, IT IS ORDERED that the clerk of court insure that petitioner's obligation to pay the \$455 fee is reflected in this court's financial records.

Finally, IT IS ORDERED that a transcript of the proceedings in the trial of this case be prepared and furnished to the plaintiff, with the fees therefor to be paid by the United States, pursuant to 28 U.S.C. §753(f).<sup>1</sup>

Entered this 4th day of October, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge

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<sup>1</sup>Opening and closing statements, and the jury selection process are not ordinarily included as a part of the trial transcript unless the appellant makes a showing that these aspects of the trial are subject to legally meritorious attack on appeal. Plaintiff has made no such showing in this case. Nor will the trial transcript include jury instructions, since a printed copy of the instructions is exist in the court's record.