

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

TITUS HENDERSON,

Plaintiff,

v.

JOHN D. BRUSH; CORRECTIONS CORPORATION
OF AMERICA; ASSOCIATE WARDEN PICKERING;
MATTHEW FRANK; PETER HUIBREGTSE; BRIAN
KOOL; JUDITH HUIBREGTSE; TRACEY GERBER;
JOHN BOSTON; JOHN DOE; SGT. GRONDIN;
J. STARKY; RUSSELL BAUSCH; ROBERT SHANNON;
TODD OVERBO; ELLEN RAY; KELLY TRUMM;
CHRISTEN BEERKIRCHER; DICK VERHAGEN;
CO II HENNERMAN; CO II SCHISSEL; RICHARD
SCHNEITER; JOHN & JANE DOE CORRECTIONAL
OFFICERS; DR. COX; and AMY CAMPBELL,

Defendants.

ORDER

06-C-12-C

As directed in this court's order of April 12, 2007, plaintiff Titus Henderson 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 April 12 order, I found that

plaintiff's appeal from the March 29, 2007 judgment 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 conclude that he is qualifies for indigent status. Further, I assess plaintiff an initial partial payment of the \$455 fee for filing his appeal in the amount of \$1.47.

Two additional matters require comment. First, plaintiff's trust fund account statement reveals that prison officials are collecting 100% of his regular income to pay amounts plaintiff owes for earlier litigation. However, this should not prevent plaintiff from paying the initial partial payment assessed above. The Court of Appeals for the Seventh Circuit held in Walker v. O'Brien, 216 F.3d 626, 628 (7th Cir. 2000), and Newlin v. Helman, 123 F.3d 429, 435 (7th Cir. 1977), that initial partial payments are to "come off the top" of all deposits to prisoners' accounts. That means that the initial partial payment assessed in this order is to be given priority over the debts plaintiff owes for his past litigation. If plaintiff finds that prison staff members misunderstand their responsibilities in this regard, he may make a copy of this order available for their review.

Second, although plaintiff has not asked for a copy of the transcript of the trial proceedings in this case, I construe his notice of 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 Titus Henderson's request for leave to proceed in forma pauperis on appeal is GRANTED. Plaintiff may have until May 29, 2007, in which to submit a check or money order made payable to the clerk of court in the amount of \$1.47. If, by May 29, 2007, 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. The clerk of court is requested to insure that the court's financial records reflect plaintiff's obligation to pay the \$1.47 initial partial payment and the remainder of the \$455 fee in monthly installments.

Further, IT IS ORDERED that a transcript of the proceedings in the trial of this case be prepared and furnished to plaintiff Titus Henderson, with the fees therefor to be paid by

the United States, pursuant to 28 U.S.C. §753(f).¹

Entered this 7th day of May, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge

¹Opening 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 already exist in the court's record.