

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

JAMES KAUFMAN,

Petitioner,

v.

ORDER

06-C-205-C

MATTHEW FRANK; THOMAS E. KARLEN;
RANDALL R. HEPP; CYNTHIA L. O'DONNELL;
RICHARD RAEMISCH; DANIELLE LACOST;
MYRON OLSON; ALAN MINSHALL; PERRY
NICHOLS, and APRIL OLIVERSON, and their
employees, agents and representatives,

Respondents.

Petitioner James Kaufman, a prisoner at the Jackson Correctional Institution in Black River Falls, Wisconsin, has submitted a proposed complaint. He asks for leave to proceed in forma pauperis. Because petitioner is a prisoner, he is subject to the 1996 Prisoner Litigation Reform Act. This means that before this court may decide whether he can proceed with his complaint in forma pauperis, petitioner will have to make an initial partial payment of the filing fee in the amount of \$5.07 and the remainder of the fee in monthly installments even if his request for leave to proceed is denied. If petitioner does not have the money to make the initial partial payment in his regular account, he will have to arrange

with prison authorities to pay some or all of the assessment from his release account. This does not mean that petitioner is free to ask prison authorities to pay *all* of his filing fee from his release account. The only amount petitioner must pay at this time is the \$5.07 initial partial payment. Before prison officials take any portion of that amount from petitioner's release account, they may first take from petitioner's regular account whatever amount up to the full amount petitioner owes.

One other matter requires attention. On April 9, 2006, the fee for filing a complaint was increased from \$250 to \$350. Petitioner signed his complaint on April 7, 2006, but the envelope in which the complaint was delivered is postmarked five days later on April 12, 2006. In Houston v. Lack, 487 U.S. 266 (1988), the United States Supreme Court held that a pro se prisoner's submission to the court is considered to be filed with the court when it is delivered with proper postage to prison authorities for mailing to the court. Therefore, if petitioner delivered his complaint to prison authorities for mailing, complete with proper postage, before April 9, the fee he owes for filing his complaint will be \$250. In order to qualify for this rate, however, petitioner will have to submit to this court no later than May 11, 2006, an affidavit in which he advises the court of the date on which he delivered his complaint to prison authorities for mailing, together with a copy of his request for disbursement of postage from his account. If, by May 11, 2006, petitioner does not submit such documentation of the timing of his filing of his complaint, I will assume that he did not file his complaint before April 9, 2006, and the court's records will reflect that he owes a

\$350 filing fee in this case.

ORDER

IT IS ORDERED that petitioner is assessed \$5.07 as an initial partial payment of the fee for filing this case. He is to submit a check or money order made payable to the clerk of court in the amount of \$5.07 on or before May 11, 2006. In addition, if petitioner gave his complaint to prison authorities for mailing, with proper postage, before April 9, 2006, he may have until May 11, 2006, in which to submit an affidavit setting forth the court of the date on which he delivered his complaint to prison authorities for mailing, together with a copy of his request for disbursement of postage from his account.

If, by May 11, 2006, petitioner does not show that he “filed” his complaint before April 9, 2006, the record will reflect that his filing fee is \$350. However, if, by May 11, 2006, petitioner fails to make the initial partial payment or show cause for his failure to do so, he will be held to have withdrawn this action voluntarily and will owe no fee. In that

event, the clerk of court is directed to close this file without prejudice to petitioner's filing his case at a later date.

Entered this 21st day of April, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge