

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

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JOSHUA HOWARD,

Petitioner,

ORDER

v.

08-cv-500-slc

NEVIN WEBSTER and  
AMY REID,

Respondents.

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On August 28, 2008, I entered an order in this case directing petitioner to submit by September 18, 2008, an initial partial payment of the filing fee in the amount of \$8.73. In a recent letter to the court accompanied by a payment of \$2.80, petitioner explains that “it will be impossible for [him] to pay the remaining \$5.93 anytime in the near future.” I construe petitioner’s letter as a motion asking the court to reduce the amount of his initial partial payment in this case and accept the \$2.80 payment as his initial partial payment.

Unfortunately, in 28 U.S.C. § 1915, Congress has dictated the manner in which prisoners must pay the fees for filing federal lawsuits and appeals, and I have no discretion to modify this method. In calculating the amount of petitioner’s initial partial payment in this case I used the trust fund account statement he submitted in support of his request to proceed *in forma pauperis*. This statement showed that for the six-month period immediately preceding the filing of the complaint in this case, petitioner had \$261.80 in deposits to his account. I was able to calculate petitioner’s average monthly deposits for that time period to be \$43.63; twenty percent of that amount is \$8.73. Because this court is bound by the provisions of the Prison Litigation Reform

Act and because it is clear petitioner's initial partial payment was calculated correctly pursuant to these provisions, his motion for the court to accept his payment of \$2.80 as his partial payment of the \$350 filing fee will be denied. He will be required to submit a check or money order for the remaining \$5.93 balance of the initial partial payment.

It may well be that petitioner will not be able to make the \$5.93 payment from the funds currently available in his prison account. In his motion, petitioner says he says that he "receive[s] \$8.00 a month in institution pay . . . ." However, the account statement petitioner submitted with his motion, which covers almost the entire month of August, does not show a deposit in the amount of \$8.00. Rather, it shows a deposit for \$2.40 only. Because petitioner may be able to make the remaining payment with a modest extension of the deadline, I am willing to allow him an extension of 21 days time to pay the remainder of the initial partial filing fee. If, however, by October 9, 2008, petitioner is unable to make the \$5.93 payment, I will consider that he has withdrawn this action and he will not owe a filing fee. In that event, if, at some future time, enough time elapses that a six-month trust fund account statement would show that he owes a smaller payment based on his smaller income, he would be free to file a new lawsuit.

#### ORDER

IT IS ORDERED that

1. Petitioner's motion for the court to reduce the amount of his initial partial payment in this case (dkt. #5) is DENIED.

2. Petitioner may have an enlargement of time to October 9, 2008, in which to submit a check or money order payable to the clerk of court in the amount of \$5.93. If, by October 9, 2008, petitioner fails to make the initial partial payment, the clerk is directed to close this file without prejudice to petitioner's filing his case at a later date.

Entered this 19<sup>th</sup> day of September, 2008.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge