

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

WILLIE C. SIMPSON,

Plaintiff,

v.

CYNTHIA THORPE and DR. COX,

Defendants.

ORDER

09-cv-532-bbc

In an order entered on May 9, 2011, I denied plaintiff Willie Simpson's request to waive the \$3.32 initial partial payment of the \$455 appeal filing fee and gave him until June 10, 2011, in which to submit his payment. Now plaintiff has filed a motion for an enlargement of time to submit the initial partial appeal filing fee along with a motion for sanctions against institution officials at the Wisconsin Secure Program Facility for failing to submit the partial payment to this court. I will deny plaintiff's request for sanctions, but will grant his motion for an extension of time so that he may coordinate payment of the initial partial filing fee with the financial office at the institution.

In support of his motion, plaintiff has submitted a trust fund account statement for the period of May 31, 2011 to June 6, 2011, which shows that on May 31, 2011 \$50 was

deposited into plaintiff's prison account. The statement shows also, that on May 31, the entire \$50 deposit was used to pay various federal court filing fees, including \$2.03 to be applied towards this case, 09-cv-532-bbc.

Pursuant to the Court of Appeals for the Seventh Circuit's holding in Newlin v. Helman, 123 F.3d 429, 435 (7th Cir. 1977), rev'd on other grounds by Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000), and Walker v. O'Brien, 216 F.3d 626 (7th Cir. 2000), the court of appeals noted that how much a prisoner owes, and how it will be collected, is determined entirely by 28 U.S.C. § 1915 and is outside the prisoner's (and the prison's) control once the prisoner files a complaint or notice of appeal. The court of appeals suggested in dicta that prison officials are required by statute to give priority to federal court filing fees: "[initial partial payment] should have been immediate, and its collection should have come off the top of the next deposit of prison wages." Thus, the fact that plaintiff has other debts and obligations should not have prevented him from making the \$3.32 initial partial appeal payment he had been assessed in this case so long as the institution had properly received notice that plaintiff has an initial partial payment due to the court. Because it may well be that poor communication between plaintiff and the business office resulted in the failure of the institution to send the \$3.32 payment to the court, I will extend the deadline within which plaintiff is to submit the \$3.32 initial partial appeal fee until July 11, 2011. In order to insure payment of the assessed amount, I am sending a copy of this order to the warden

at the Wisconsin Secure Program Facility and requesting that he take whatever steps are necessary to see to it that the initial partial appeal payment ordered in this case is paid from the next deposit made to plaintiff's account.

ORDER

IT IS ORDERED that

1. Plaintiff Willie Simpson's motion for sanctions, dkt. #134 is DENIED.
2. Plaintiff's motion for an enlargement of time to pay the \$3.32 initial partial payment of the \$455 appeal filing fee, dkt. #135 is GRANTED.
3. Plaintiff may have an enlargement of time to July 11, 2011, in which to submit a check or money order made payable to the clerk of court in the amount of \$3.32. If, by July 11, 2011, plaintiff fails to make 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.

Entered this 20th day of June, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge