

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

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DWAYNE ALMOND,

Plaintiff,

v.

JEAN LUTSEY, JEANANNA ZWIERS,  
DR. RICHARD HEIDORN  
and MICHAEL BAENEN,

Defendants.  
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ORDER

11-cv-333-bbc

On August 29, 2011, I assessed plaintiff Dwayne Almond an initial partial payment of the \$350 filing fee in the amount of \$1.18 and gave him until September 19, 2011, in which to make the payment. Now plaintiff has submitted a “Motion to Show Interference of Misconduct in Public Office of GBCI/Business” dated September 8, 2011, that I construe as a motion to use release account funds to pay the initial partial payment.

In his motion, plaintiff says that he has been unable to comply with the August 29 order because institution staff refuse to allow plaintiff to use his release account funds to pay the initial partial payment. Plaintiff should be aware that the language of 28 U.S.C. § 1915(b)(1) suggests that prison officials are required to use a prisoner’s release account to satisfy

an initial partial payment if no other funds are available, Carter v. Bennett, 399 F. Supp. 2d 936, 936-37 (W.D. Wis. 2005), and the state of Wisconsin has conceded that this provision of the Prison Litigation Reform Act supersedes any restrictions state law imposes on the availability of funds in a prisoner's release account. Therefore, if sufficient funds do not exist in plaintiff's regular account to pay his initial partial payment, he should be allowed to use his release account to pay some or all of the assessed amount. Accordingly, I will give plaintiff additional time in which to make his payment. Plaintiff may show this order to the appropriate prison authorities to insure they understand the nature of his disbursement request and the scope of their obligation.

## ORDER

IT IS ORDERED that

1. Plaintiff's motion to use release account funds (dkt. #10) to pay the initial partial payment he has been assessed in this case is GRANTED.
2. Plaintiff may have an enlargement of time to October 4, 2011, in which to submit a check or money order made payable to the clerk of court in the amount of \$1.18. If, by October 4, 2011, plaintiff fails to pay the initial partial payment or explain his failure to do so, then I will consider dismissing

his case for failure to pay the initial partial payment.

Entered this 13th day of September, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge