

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

WILLIE SIMPSON,

Plaintiff,

v.

TIMOTHY HAINES,

Defendant.

ORDER

11-cv-851-bbc

In an order entered in this case on May 31, 2013, I assessed plaintiff \$0.58 as an initial partial payment of the \$455 fee for filing his appeal. Now plaintiff has filed a motion to proceed without prepayment of the initial partial appeal filing fee pursuant to 28 U.S.C. § 1915(b)(4). In his submission, plaintiff explains that he cannot pay the initial partial filing fee because he has no money in his trust fund account or in his release account. Plaintiff requests that his appeal move forward without prepayment of the \$0.58 appeal filing fee.

Unfortunately, I cannot grant this request. 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. I will however, adjust the amount that plaintiff is to pay as his initial partial appeal fee. Upon review of plaintiff's trust fund account statement, I see that I incorrectly calculated plaintiff's initial partial filing fee. In assessing the amount of plaintiff'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 on appeal. In determining whether a prisoner litigant qualifies for indigent status, this court applies the formula set forth in 28 U.S.C. § 1915(b)(1). According to this formula, a prisoner requesting leave to proceed in forma pauperis must prepay 20% of the greater of the average monthly balance or the average monthly deposits made to his prison account in the six-month period immediately preceding the filing of his appeal. Plaintiff's trust fund account statement shows that for the six-month period immediately preceding the filing of the complaint in this case, plaintiff's average monthly balance is \$0.58. Twenty percent of that amount is \$0.11. That is the amount plaintiff should pay for his initial partial appeal payment. Because plaintiff may be able to make the payment if he has more time, I am willing to give him an enlargement of time to pay the initial partial appeal filing fee.

If plaintiff does not have the money to make the initial partial appeal 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. The only amount plaintiff must pay at this time is the \$0.11 initial partial appeal payment. Before prison officials take any portion of that amount from plaintiff's release account, they may first take from plaintiff's regular account whatever amount up to the full amount plaintiff owes. Plaintiff should show a copy of this order to prison officials to make sure they are aware they should send plaintiff's initial partial appeal payment to this court.

ORDER

IT IS ORDERED that:

1. Plaintiff Willie Simpson's motion for the court to waive the initial partial payment of the \$455 appeal filing fee in this case, dkt. #135, is DENIED.

2. Plaintiff may have an enlargement of time to July 5, 2013, in which to submit a check or money order made payable to the clerk of court in the amount of \$0.11. If, by July 5, 2013, 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.

Entered this 12th day of June, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge