

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

IAN DANIEL KOCH,

Plaintiff,

ORDER

v.

12-cv-749-wmc

FOND DU LAC CO. MEDICAL STAFF,
and FOND DU LAC CO. JAIL/SHERIFF'S DEPT.,

Defendants.

In an order entered on October 12, 2012, plaintiff Ian Koch was directed to submit an initial partial payment of the filing fee in the amount of \$1.79 by November 5, 2012. Now plaintiff has filed a letter in which he states that he has no money in his regular or release accounts and that he was not allowed to use his legal loan to pay the initial partial filing fee. Plaintiff requests that the case move forward without prepayment of the initial partial filing fee. I construe plaintiff's submission as a motion to waive the initial partial filing fee in this case.

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. In calculating 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*. This statement showed that for the six-month period immediately preceding the filing of the complaint in this case, plaintiff deposits to his account totaling \$8.93. Twenty percent of that amount is \$1.79. Because this court is bound by the provisions of the Prison Litigation Reform Act and because it is clear plaintiff's initial partial payment was calculated correctly pursuant to these provisions, his motion for the court to waive the \$1.79 initial partial filing fee in this case must be denied.

I understand that plaintiff does not believe he can make the payment from the funds currently available in his prison account, however because plaintiff may be able to make the payment if he has more time, I am willing to give him three more weeks to pay the initial partial filing fee. If, however, by November 30, 2012, plaintiff has not made this \$1.79 payment, then I will conclude that he has withdrawn this action and he will not owe any filing fee at all. In that event, if, at some future time, enough time elapses that a six-month trust fund account statement would show that he has no means to make an initial partial payment, he would be free to file a new lawsuit or a motion to reopen the case.

ORDER

IT IS ORDERED that:

- (1) Plaintiff's motion for the court to waive the initial partial payment in this case (dkt. 5) is DENIED.
- (2) Plaintiff may have an enlargement of time to November 30, 2012, in which to submit a check or money order payable to the clerk of court in the amount of \$1.79. If, by November 30, 2012, plaintiff fails to make the initial partial payment, the clerk is directed to close this file without prejudice to plaintiff's filing his case at a later date.

Entered this 8th day of November, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge