

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

A-KINBO JIHAD-SURU HASHIM; a/k/a JOHN
D. TIGGS, JR.; EZRA C. MARTIN, DEMETRIUS
L. ROBERTSON; DANIEL L. SMITH; JAMES D.
TOWNS; RONALD E. JACKSON; AL ROY CURTIS;
JOHN E. BACHER; DERRICK SANDERS; DEYUL
THAMES; ERIC M. WASHINGTON; DONALD C.
LEE; MICHAEL S. JOHNSON; JAMES PRICE;
RUFUS LYNCH; TONY EPPENGER; MICHAEL A.
SCIORTINO; ROBERT E. SALLIE; JAMES E. JACKSON;
RAYNARD JACKSON; RAYNELL D. MORGAN;
CORNELIOUS MADDOX; BARON WALKER; AMOS
T. CRAIG; TIMOTHY REED; SAMMY J. GATES;
JONATHAN P. COLE; ANTHONY MURRY; DAVID
HUDSON; EZRA C. MARTIN, JR.; RODOSVALDO
POZO; NORMAN C. GREEN, JR.; EUGENE CHERRY;
STANLEY FELTON; LAMONT BROWN;
and DENNIS JONES-EL,

Petitioners,

v.

WARDEN GERALD A. BERGE and
ATTORNEY GENERAL JAMES E. DOYLE, JR.,

Respondents.

ORDER

01-C-314-C

In April, 2001, petitioner John D. Tiggs filed a complaint listing 86 proposed

petitioners. In an order dated April 23, 2001, I advised petitioner Tiggs that before the complaint could be filed, he would have to submit the original copy of the complaint bearing each petitioner's original signature, and that he would be responsible for arranging for the submission of affidavits of indigency and six-month trust fund account statements from each petitioner wishing to be a party to the case. I noted that unless petitioner's original complaint was accompanied by the \$150 filing fee, any petitioner wishing to participate in the case would have 30 days from the date the original complaint is filed in which to submit the required trust fund account statements and affidavits of indigency. I stated that at the end of the 30-day period, I would consider the request for leave to proceed in forma pauperis only as to those petitioners who submitted the required statements.

Petitioner Tiggs filed the original complaint on May 4, 2001. The petitioners whose names are listed in the caption of this order are the petitioners who responded to the request for submission of trust fund account statements. They are the only individuals who will be considered as petitioners in the case.

When a prisoner requests leave to proceed as a pauper in a lawsuit filed in federal court, the court is required to assess and collect an initial partial payment of the filing fee pursuant to 28 U.S.C. § 1915(b)(1). The amount to be assessed is 20% of the greater of the average monthly deposits made to the prisoner's account or the average monthly balance in the prisoner's account for the six-month period immediately preceding the filing of the

lawsuit. The statute is silent about the manner in which a court must proceed when multiple prisoners join together in a lawsuit. Equal division of the fee among the petitioners is not a desirable choice. That method ignores Congress's direction that the assessments be made using the specific formula it describes in the statute, and that inmates who do not have the means to pay the fee may proceed without paying an initial partial payment. If I calculate an initial partial payment for each petitioner with the means to pay such a payment using the required formula, however, I will arrive at an amount to be collected that is greater than the total of the amount owed for the filing fee. Therefore, I have calculated initial partial payments from the trust fund account statements of the first petitioners submitting them whose statements reveal the petitioner has the means to pay an initial partial payment. I have calculated the initial partial payments using the formula set out in § 1915(b)(1). When the sum of the assessed amounts totaled \$150, I stopped calculating assessments. This means that there are petitioners proceeding in this action with means to pay an initial partial payment who are not required to pay an initial partial payment at this time. However, if any one or more of the petitioners who have been assessed a fee opts not to proceed in this lawsuit by not paying the assessed amount, I will continue to assess initial partial payments to the petitioners with means to pay an assessed amount until the fee is paid in full.

Petitioners should be aware that the State of Wisconsin has taken the position that under the supremacy clause of the United States Constitution, the Prisoner Litigation

Reform Act supersedes any restrictions state law imposes on the availability of funds in a prisoner's release account. Therefore, if any petitioner cannot pay the initial partial payment from funds presently available to him in his regular account, he will have to make arrangements with Wisconsin prison authorities to pay the assessment from his release account.

ORDER

IT IS ORDERED the caption of petitioner's complaint be corrected to show only the names of the petitioners listed in the caption of this order. The remaining proposed petitioners are DISMISSED from this action for their failure to prosecute.

Further, IT IS ORDERED that the following persons are assessed the following amount as an initial partial payment of the filing fee in this case:

Tony Eppenger	\$11.14
Rufus Lynch	\$13.83
James Price	\$10.69
Michael S. Johnson . .	\$9.01
Donald Lee	\$15.66
Eric Washington . . .	\$13.38
Deyul Thames	\$2.50

Derrick Sanders	\$14.13
John E. Bacher	\$7.91
Al Roy Curtis	\$6.07
Ronald E. Jackson . . .	\$5.20
James D. Towns	\$8.91
Daniel L. Smith	\$17.27
Demetrius Robertson	\$7.70
Ezra C. Martin	<u>\$6.60</u>
TOTAL	\$150.00

Finally, IT IS ORDERED that if, by July 16, 2001, any petitioner fails to pay the initial partial payment assessed to him, I will assume that he does not wish to proceed in the case. In that event, I will assess initial partial payments to one or more of the petitioners with means to pay who have not yet been assessed a payment.

Entered this 14th day of June, 2001.

BY THE COURT:

BARBARA B. CRABB
District Judge