IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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ANTOINE LONOVAN GUY,

ORDER

Petitioner,

02-C-47-C

v.

JON LITCHER, GERALD BERGE,
JANET E. WALSH PH.D., EUGENE WALLS DR.,
TIM DOUMA SECURITY DIRECTOR and
BILL NOLAND SECURITY SUPERVISOR,

Respondents.

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This is a proposed civil action for injunctive and monetary relief, brought pursuant to 42 U.S.C. § 1983. Petitioner, who is presently confined at the Supermax Correctional Institution in Boscobel, Wisconsin, alleges that respondents violated his Fourteenth Amendment right to due process when they removed a "do not double-cell" restriction without medical consent, conducted a disciplinary hearing without allowing him to confront his accuser and transferred him to Supermax; his Eighth Amendment right to adequate mental health care at Columbia Correctional Institution when they did not provide him any mental health treatment; his Fourteenth Amendment right of access to the courts when they

confiscated his legal materials; his Eighth Amendment right to adequate medical and dental care when they did not treat his ingrown toenail or repair his dentures; his Eighth Amendment right to be free from cruel and unusual punishment when they subjected him to inhumane conditions of confinement; and his Fourth Amendment right to be free from unreasonable searches. Petitioner also alleges that respondents retaliated against him.

Petitioner seeks leave to proceed without prepayment of fees and costs or providing security for such fees and costs, pursuant to 28 U.S.C. § 1915. From the affidavit of indigency accompanying petitioner's proposed complaint, I conclude that petitioner is unable to prepay the full fees and costs of instituting this lawsuit. Petitioner has submitted the initial partial payment required under § 1915(b)(1).

In addressing any pro se litigant's complaint, the court must construe the complaint liberally. See Haines v. Kerner, 404 U.S. 519, 521 (1972). However, if the litigant is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave to proceed if the prisoner has on three or more previous occasions had a suit dismissed for lack of legal merit (except under specific circumstances that do not exist here), or if the prisoner's complaint is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks money damages from a defendant who is immune from such relief. Although this court will not dismiss petitioner's case sua sponte for lack of administrative exhaustion, if respondents can prove that petitioner has not exhausted the remedies available

to him as required by § 1997e(a), they may allege his lack of exhaustion as an affirmative defense and argue it on a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). See Massey v. Helman, 196 F.3d 727 (7th Cir. 1999); see also Perez v. Wisconsin Dept. of Corrections, 182 F.3d 532 (7th Cir. 1999).

Petitioner will be granted leave to proceed on his claims that the physical conditions of his confinement and systemic inadequacies in the provision of medical and dental care violate his Eighth Amendment rights and that the policy of unreasonable searches violate his Fourth Amendment rights. However, the proceedings as to the merits of these claims will be stayed because petitioner is a member of the pending class in Jones 'El v. Berge, No. 00-C-421-C, in which the claims are being considered. Petitioner will be denied leave to proceed on his Fourteenth Amendment claim that he was denied access to the courts and his Eighth Amendment claim that respondents at Columbia denied him adequate mental health care on the ground that these claims fail to state a claim upon which relief can be granted. He will be denied leave to proceed on his Fourteenth Amendment claims that he was denied due process and his retaliation claim because these claims are legally frivolous.

As a preliminary matter, I note that petitioner has failed to sign his proposed complaint. He may have until March 11, 2002, in which to submit to this court a signed and dated signature page, attesting to the fact that the allegations contained in the complaint are true and correct.

In his complaint, petitioner makes the following allegations of fact.

ALLEGATIONS OF FACT

Petitioner Antoine Lonovan Guy is an inmate at Supermax Correctional Institution. Before being transferred to Supermax, he was incarcerated at Columbia Correctional Institution. Respondent Jon Litcher is Secretary of the Department of Corrections. Respondent Gerald Berge is warden at Supermax. The remaining respondents are employees at Columbia: respondents Janet Walsh and Eugene Walls are medical staff; respondent Tim Douma is security director; and respondent Bill Noland is security supervisor.

I. COLUMBIA CORRECTIONAL INSTITUTION

A. Fourteenth Amendment: Due Process

1. DND restriction removed

For the past four or five years, petitioner has been monitored by clinical services and has had a clinical restriction placed on his face card reading, "DND," which stands for "do not double." This restriction was removed without anyone from health care consenting.

Petitioner explained his medical issues to Dr. Maze, Dr. Heribick and respondent Wall. Respondent Wall seemed indifferent or ignored the fact that petitioner suffers from psychological problems. Petitioner is disturbed mainly by inmates or at times he feels

harassed by correctional authorities. In some cases, fellow inmates make accusations about the prescribed medications that petitioner receives for hypertension and depression, causing him constant stress.

2. Incident leading to conduct report and transfer to Supermax

On or about February 9, 2000, petitioner was transferred from one security unit to another for refusal to double cell. Petitioner was housed with inmate Jimmie Johnson who was very loud and violent at times. Petitioner discovered that inmate Johnson was convicted of assault and battery and had another charge of assault pending.

Petitioner had refused to double on five previous occasions and he had never received leg restraints. Petitioner had received conduct reports on those previous occasions but the reports do not show that petitioner became violent or threatened anyone when removed from general population and placed into a security unit.

On June 21, 2000 at approximately 5:30 p.m., petitioner was removed from his cell for the usual reason: refusal to double cell. Petitioner tried to explain to security officer Evers that he had a clinical restriction against double celling that should not be removed without the approval of a physician. In his report of the incident, officer Evers states that petitioner was belligerent. Petitioner believes that he was only telling the officer about the restriction. Evers escorted petitioner out of his cell and into the day room area, where there

is a video camera. Petitioner was accused of threatening and battery but no one saw him assault anyone. Petitioner has been removed from his cell on several occasions without being hostile or disobeying orders.

According to the conduct report written after the incident, petitioner was verbally disrespectful in the hallway and refused to kneel. During a struggle that ensued, petitioner kicked backward, striking officer Lange in the chest as he was trying to secure petitioner's legs. After additional restraints were applied, petitioner was escorted in escort compression holds. As petitioner was escorted across the courtyard, he turned toward Evers and spat in his face. Petitioner was placed in "control" status. According to petitioner, his backward kick of Lange was unintentional, occurring after he was kicked in the face.

At the disciplinary hearing following the conduct report, petitioner was denied the opportunity to confront his accuser who had alleged that petitioner has assaulted him. Petitioner's advocate, Liza Lipenski, did not produce any evidence showing that an investigation had taken place. Petitioner was found guilty of battery, disobeying orders, disrespect and disruptive conduct and was sentenced to 8 days' adjustment segregation, 360 days' program segregation, 20 days' mandatory release extension and 10 days' cell confinement. This conduct report was the basis for petitioner's transfer to Supermax.

B. Retaliation

When petitioner was removed from his cell on June 21, 200, respondents Douma, Noland, Walsh and Walls placed petitioner in the day room area intentionally so that they could retaliate against him.

C. Eighth Amendment: Inadequate Mental Health Care

Petitioner did not receive treatment for his mental health problems while housed at Columbia. Petitioner was sent to punitive confinement several times for refusing to double cell. Staff does not want to do their duty.

II. SUPERMAX CORRECTIONAL INSTITUTION

A. Fourteenth Amendment: Due Process

Petitioner has been at Supermax for one year. If he were not at Supermax, he would be eligible for release. Petitioner has spent more time in confinement than if he had not been transferred to Supermax because of the length of time that it takes to complete the level system. At Supermax, petitioner is subject to denial of privileges, restrictions, limitations on education and employment opportunities that are more severe than any other correctional facility in the Wisconsin prison system.

B. Fourteenth Amendment: Access to the Courts

The policy of conducting searches leads to the confiscation of legal material. Officers switch around legal materials in folders so they are later misplaced when an inmate tries to find them. Officers sometimes "just confiscate them in conceal US post mail."

C. Eighth Amendment: Inadequate Medical, Dental and Mental Health Care

The medical, dental and mental health care at Supermax is wholly inadequate. Inmates often experience delays in receiving treatment. Defendants have failed to provide medical staff and other resources for proper care of serious medical needs. Petitioner has had an infected toenail since 1997. It has not grown normally since it has been infected. Health services has not done anything to treat the toenail. Petitioner's dentures have been broken in four places since July 18, 2000. He cannot eat properly while wearing them. He has choked and vomited and gasped for air while waiting for dental services. Petitioner has been diagnosed with symptoms of "stress an depression syndrome anti-socail [sic] personality disorderly behavior causen disturbance agitation feeling worthless difficulties in coentraten on inner selves [sic]." Petitioner has thought of suicide and self-destructive behavior many times. He often hears voices.

D. Eighth Amendment: Conditions of Confinement

Inmates at Supermax are locked in their cells 23 hours a day. Some inmates choose

not to go to recreation because of the restraints placed on their legs and arms whenever thay leave their cells. Inmates never see daylight or the outside when at recreation or at the law library. There is no outside recreation area. There is no recreation equipment in the recreation rooms.

Inmates are instructed not to cover their heads when they sleep. They are awakened if they do not follow this rule. This causes sleep deprivation, chronic depression, chronic headaches, red eyes, pain and psychological problems.

Inmates are monitored 24 hours a day on video and by officers who check on inmates every 25 minutes.

E. Fourth Amendment: Unreasonable Searches

Inmates at Supermax are frequently subjected to cell searches as well as strip searches and body frisking. Often these searches are not conducted for legitimate reasons but to harass inmates.

DISCUSSION

I. CLAIMS INDEPENDENT FROM JONES 'EL

A. Fourteenth Amendment: Due Process

The Fourteenth Amendment prohibits a state from depriving "any person of life,

liberty, or property, without due process of law." U.S. Const. amend. XIV. Before petitioner is entitled to Fourteenth Amendment due process protections, he must first have a protected liberty or property interest at stake. Averhart v. Tutsie, 618 F.2d 479, 480 (7th Cir. 1980). Liberty interests are "generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, nonetheless impose[ ] atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Sandin v. Conner, 515 U.S. 472, 484 (1995) (citations omitted).

1. "Do not double-cell" restriction

Petitioner alleges that the restriction on his face card prohibiting him from being double-celled was removed without the consent of a physician or other medical staff. He asserts that he was given the restriction because of psychological problems that have not disappeared. However, under Sandin, petitioner's allegations do not suggest that he was subjected to an "atypical and significant hardship . . . in relation to the ordinary incidents of prison life." Id. To the contrary, having to share a cell with another inmate is hardly a surprising aspect of prison life. Petitioner's request for leave to proceed on this claim will be denied because it is legally frivolous.

2. Conduct report hearing

Petitioner alleges that his advocate violated his right to due process by not presenting evidence at the hearing showing that an investigation had taken place. Petitioner does not have a constitutional right to have an advocate. Thus, any steps that she failed to take do not make out a constitutional claim.

Petitioner also alleges that respondents did not allow him to confront his accusers at his conduct report hearing. Because the conduct report shows that petitioner's mandatory release date was extended by 20 days, I understand petitioner to allege that he lost good time credits as a result of the hearing, implicating due process procedural protections under Sandin.

The right to call witnesses is basic to a fair hearing. Wolff v. McDonnell, 418 U.S. 539, 566 (1974). Generally speaking, inmates have the right to call witnesses in their defense at prison disciplinary hearings, subject to the prison's legitimate security concerns, id. at 566; Redding v. Fairman, 717 F.2d 1105, 1114 (7th Cir. 1983), but the Supreme Court has determined that cross-examination of an adverse witness poses more dangers than examination of a friendly one. Cross-examination of an adverse witness such as a corrections officer or an inmate who accuses another of misconduct might easily lead to violence or other forms of retaliation. With these dangers in mind, the Court has held that the Constitution does not guarantee the procedural right to call adverse witnesses. Wolff, 418

U.S. at 567-68.

Wisconsin's regulations permit inmates to call adverse witnesses unless their testimony is irrelevant, cumulative or will expose the witness to a risk of harm or, in the case of inmate witnesses, unless they decline to testify. Wis. Admin. Code § DOC 303.81(3). However, even assuming none of the exceptions applied to Lange and Evers and they were required to testify under § DOC 303.81(3), that regulation does not create a constitutionally protected liberty interest. An expectation of receiving process is not, without more, a liberty interest protected by the due process clause. Shango v. Jurich, 681 F.2d 1091, 1101 (7th Cir. 1982). As the Supreme Court explained: "Process is not an end in itself. Its constitutional purpose is to protect a substantive interest to which the prisoner has a legitimate claim of entitlement." Olim v. Wakinekona, 461 U.S. 238, 251 (1983); see also Hewitt v. Helms, 459 U.S. 460, 471 (1983). Because § 303.81 of the administrative code is procedural in nature, it cannot give rise to a substantive right protected by the Constitution.

By refusing to permit petitioner to call Lange and Evers as adverse witnesses, respondents may have violated state law, but they did not violate the Fourteenth Amendment, and federal courts lack jurisdiction to award relief against state actors solely on the grounds that they have violated their own state's laws. Pennhurst State School and Hospital v. Halderman, 465 U.S. 89 (1984). Accordingly, petitioner's request for leave to

proceed in forma pauperis on this claim will be denied because the claim is legally frivolous.

3. Transfer to Supermax

Petitioner alleges that he received no due process before he was transferred to Supermax, where the conditions are severe. However, the placement decision about which petitioner complains does not implicate a liberty interest. Prisoners do not have a liberty interest in not being transferred from one institution to another. Meachum v. Fano, 427 U.S. 215 (1976) (due process clause does not limit interprison transfer even when the new institution is much more disagreeable). The "Constitution does not mandate a nationwide rule requiring certain procedural formalities, such as a hearing, prior to a transfer." Shango, 681 F.2d at 1098. The only limitation on the power of state officials to transfer an inmate from one institution to another is that officials may not transfer the inmate as punishment for his exercise of his fundamental constitutional rights or for another impermissible reason. Buise v. Hudkins, 584 F.2d 223, 229 (7th Cir. 1978). Petitioner does not allege that he was transferred to Supermax in retaliation for his exercise of a constitutional right or that the transfer took place for a different impermissible reason. Instead, he alleges only that he was transferred for no reason and without an adequate hearing. Petitioner's request for leave to proceed in forma pauperis on his due process claim will be denied because the claim is legally frivolous.

B. Retaliation

A prison official who takes action against a prisoner to retaliate against the prisoner for exercising a constitutional right may be liable to the prisoner for damages. See Babcock v. White, 102 F.3d 267, 275 (7th Cir. 1996). To state a claim of retaliatory treatment for the exercise of a constitutionally protected right, plaintiff need not present direct evidence in the complaint; however, he must "'allege a chronology of events from which retaliation may be inferred.'" Black v. Lane, 22 F.3d 1395, 1399 (7th Cir. 1994) (quoting Benson v. Cady, 761 F.2d 335, 342 (7th Cir. 1985)). It is insufficient to allege the ultimate fact of retaliation. See Benson, 761 F.2d at 342. In addition, the facts alleged must be sufficient to show that absent a retaliatory motive, the prison official would have acted differently. See Babcock, 102 F.3d at 275.

Petitioner alleges that respondents Douma, Noland, Walsh and Walls placed him in the day room area intentionally so that they could retaliate against him. However, petitioner does not allege that he was retaliated against for having exercised a constitutionally protected right, as required to pursue a viable retaliation claim. In addition, petitioner's conclusory allegation does not suggest that respondents would have acted differently if they had not had a retaliatory motive: the allegations do not suggest that it was possible for petitioner to be escorted to control status without passing through the day room. Petitioner's request for leave to proceed on this claim will be denied because

it is legally frivolous.

C. Eighth Amendment: Inadequate Mental Health Care

Petitioner alleges that at Columbia, he did not receive treatment for his mental health problems because the staff did not want to do its duty. To state an Eighth Amendment claim of cruel and unusual punishment arising from improper medical treatment, "a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 106 (1976). A condition is serious if "the failure to treat a prisoner's condition could result in further significant injury or the unnecessary and wanton infliction of pain." Gutierrez v. Peters, 111 F.3d 1364, 1373 (7th Cir. 1997). Deliberate indifference requires that "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Farmer v. Brennan, 511 U.S. 824, 837 (1994). Inadvertent error, negligence, gross negligence and ordinary malpractice are not cruel and unusual punishment within the meaning of the Eighth Amendment. Vance v. Peters, 97 F.3d 987, 992 (7th Cir. 1996); see also Snipes v. Detella, 95 F.3d 586, 590-91 (7th Cir. 1996).

Even assuming that he has a serious mental health need, petitioner has failed to allege facts sufficient to establish that respondents were deliberately indifferent to that

need. Petitioner has not alleged any facts suggesting that respondents were aware of facts from which they could infer that there was a substantial risk of serious harm to petitioner if he did not receive treatment or that they drew that inference. Farmer, 511 U.S. at 837. Accordingly, I will deny petitioner's request for leave to proceed on this claim because he has failed to state a claim upon which relief may be granted.

D. Access to the Courts

Petitioner alleges that respondent have impeded his constitutional right of access to the courts by confiscating legal material and by rearranging legal materials in his cell during searches. It is well established that prisoners have a constitutional right of access to the courts for pursuing post-conviction remedies and for challenging the conditions of their confinement. Campbell v. Miller, 787 F.2d 217, 225 (7th Cir. 1986) (citing Bounds v. Smith, 430 U.S. 817 (1977)); Wolff v. McDonnell, 418 U.S. at 539, 578-80 (1974); Procunier v. Martinez , 416 U.S. 396, 419 (1974). The right of access is grounded in the due process and equal protection clauses of the Fourteenth Amendment. Murray v. Giarratano, 492 U.S. 1, 6 (1989). To insure meaningful access, states have the affirmative obligation to provide inmates with "adequate law libraries or adequate assistance from persons trained in the law." Bounds, 430 U.S. at 828.

To have standing to bring a claim of denial of access to the courts, a plaintiff must

allege facts from which an inference can be drawn of "actual injury." Lewis v. Casey, 518 U.S. 343, 349 (1996). The plaintiff must have suffered injury "over and above the denial." Walters v. Edgar, 163 F. 3d 430, 433-34 (7th Cir. 1998) (citing Lewis , 518 U.S. 343). At a minimum, the plaintiff must allege facts showing that the "blockage prevented him from litigating a nonfrivolous case." Id. at 434; see also Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992) (plaintiff may sustain burden of establishing standing through factual allegations of complaint).

Petitioner does not allege injury over and above the inconvenience caused by the policies and acts. Specifically, he does not allege that because of these policies and conduct, a nonfrivolous legal action of his was dismissed or the time for filing such an action ran out. Thus, petitioner's request for leave to proceed on his claim that respondents violated his right of access to the courts will be dismissed for failure to state a claim upon which relief may be granted.

II. CLAIMS THAT OVERLAP WITH JONES 'EL

A. Eighth Amendment: Inadequate Medical and Dental Care

I understand petitioner to allege that respondents have violated his Eighth Amendment right to adequate medical care by failing to treat his ingrown toenail and his right to adequate dental care by failing to repair his broken dentures. Standing alone and

without further detail, these allegations do not state a claim of constitutional wrongdoing. At most, the allegations would support a state law claim of negligence not appropriately raised in federal court.

However, petitioner is a class member in Jones 'El, in which the plaintiffs contend that there are systemic inadequacies in the provision of medical, dental and mental health care at Supermax that violate class members' rights. Jones 'El v. Berge, 00-C-421-C, slip op. at 37 (order entered August 14, 2001). Because the class in Jones 'El was certified to seek declaratory and injunctive relief only, a member of the class in Jones 'El who wants to recover money damages for injuries suffered as a result of a systemically inadequate medical care system, for example, must file a lawsuit separate from the Jones 'El case asserting the claim for damages. Although petitioner's complaint does not allege that there are systemic inadequacies in the delivery of medical or dental care and that it was those inadequacies that caused him to suffer a delay in treatment, I will construe his complaint liberally to include such a claim. Therefore, petitioner will be granted leave to proceed against respondents Berge and Litscher, the defendants in the Jones 'El case, on his claim that he suffered damages as a result of a systemically inadequate medical and dental health care system at Supermax. This claim will be stayed pending resolution of the question of liability in Jones 'El. Petitioner should be aware, however, that if the claim of systemic inadequacies in the delivery of health care at Supermax is not resolved on its merits in the

Jones 'El case, then, when the stay is lifted, petitioner will be given the choice of amending his complaint to assert the claim directly, in which case he will have take sole responsibility for proving the claim, or of having the claim dismissed.

B. Conditions of Confinement: Placement at Supermax

Petitioner alleges that he is subjected to the following conditions at Supermax: confinement 23 hours a day; no access to daylight; no outdoor recreation area; no recreation equipment; not being allowed to cover his head when he sleeps; and constant monitoring by video and in person. Petitioner alleges that as a result of these conditions, he experiences sleep deprivation, chronic depression, chronic headaches, red eyes and psychological problems. Like petitioner's allegations that he suffered a delay in the delivery of medical, dental and mental health treatment, these allegations may not by themselves make out a claim of a constitutional violation. However, in the Jones 'El case, the plaintiffs allege that inmates at Supermax are subjected to a combination of isolating physical conditions of confinement that in their totality violate the Eighth Amendment. Liberally construing plaintiff's complaint, I understand him to allege that he has suffered damages as a result of his being subjected to these conditions. Therefore, I will grant petitioner leave to proceed against respondents Berge and Litscher on this claim. The claim will be stayed pending resolution of the question of liability in Jones 'El. Again, petitioner should be aware that

if the claim in Jones 'El regarding the totality of conditions at Supermax is not resolved on its merits, when the stay is lifted petitioner will face the choice of amending his complaint to assert the claim directly and taking responsibility for proving the claim, or the claim will be dismissed.

C. Fourth Amendment: Unreasonable Searches and Seizures

Petitioner alleges that inmates at Supermax are subjected to cell searches, strip searches and body searches on a frequent basis and often for no legitimate reason, but does not allege that he has personally been subjected to these searches. Like his Eighth Amendment claims, these allegations do not by themselves make out a claim of a constitutional violation. However, in the Jones 'El case, the plaintiffs allege that as a general rule, inmates at Supermax are subjected to unreasonable searches. Liberally construing plaintiff's complaint, I understand him to allege that he has suffered damages as a result of his being searched. Therefore, I will grant petitioner leave to proceed against respondents Berge and Litscher on this claim. The claim will be stayed pending resolution of the question of liability in Jones 'El. Again, petitioner should be aware that if the claim in Jones 'El regarding unreasonable searches is not resolved on its merits, when the stay is lifted petitioner will face the choice of amending his complaint to assert the claim directly and taking responsibility for proving the claim, or the claim will be dismissed.

ORDER

IT IS ORDERED that

1. Petitioner Antoine Lonovan Guy's request for leave to proceed in forma pauperis is GRANTED on his Eighth Amendment inadequate medical and dental health care claim, his Eighth Amendment conditions of confinement claim and his Fourth Amendment unreasonable searches claim, all against respondents Berge and Litscher; however, the proceedings relating to the merits of the claims are STAYED until this court has ruled on the constitutionality of the alleged constitutional violations in Jones 'El v. Berge, No. 00-C-421-C. If respondents file an answer to the complaint, this case will be stayed automatically without further order. However, if respondents exercise their right to file a motion permitted under Fed. R. Civ. P. 12 that does not go to the merits of petitioner's Eighth and Fourth Amendment claims, the court will schedule briefing on the motion.

2. Petitioner's request for leave to proceed is DENIED on his Fourteenth Amendment claim for denial of access to the courts and his Eighth Amendment inadequate mental health care claim at Columbia for failure to state a claim.

3. Petitioner's request for leave to proceed is DENIED on his Fourteenth Amendment due process claims and his retaliation claim because the claims are legally frivolous.

4. Respondents Janet E. Walsh, Eugene Walls, Tim Douma and Bill Noland are

DISMISSED from this case.

5. Petitioner may have until March 22, 2002, to submit to the court a signed and dated signature page in which he declares that the allegations contained in his complaint are true and correct. If the completed signature page is not received by this date, the complaint will be stricken and the case will be dismissed for petitioner's failure to cure the defect in his complaint.

6. Petitioner should be aware of the requirement that he send respondents a copy of every paper or document that he files with the court. Once petitioner has learned the identity of the lawyers who will be representing respondents, he should serve the lawyers directly rather than respondents. Petitioner should retain a copy of all documents for his own files. If petitioner does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents. The court will disregard any papers or documents submitted by petitioner unless the court's copy shows that a copy has gone to respondents or to respondents' lawyers; and

7. The unpaid balance of petitioner's filing fee is $134.22; this amount is to be paid in monthly payments according to 28 U.S.C. § 1915(b)(2) when the funds become

available.

Entered this 7th day of March, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge