

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

JAMES J. KAUFMAN,

Plaintiff,

v.

GARY R. McCAUGHTRY and
JAMYI WITCH,

Defendants.

ORDER

03-C-027-C

On April 25, 2006, I assessed plaintiff James Kaufman a \$5.54 initial partial payment of the fee for filing an appeal in case no. 03-C-27-C. I told plaintiff that if he failed to make the initial partial payment by May 18, 2006, I would notify the court of appeals of his failure to pay so that it could take whatever action it deemed appropriate with respect to his appeal. Now plaintiff has written a letter to the court to advise it that prison officials are declining to issue a check from his account to pay the initial partial payment. Plaintiff has attached to his letter a copy of an information request form he sent to the prison's financial office in which he asks that the funds be sent to this court. Also attached is a response to the request from Financial Program Supervisor C. Devendorf, in which Devendorf states,

The Business Office is in receipt of your letter containing the orders for you to pay a combined total of \$10.61 as initial filing fees for [case nos. 06-C-205

and 03-C-027-C].

At present you have no funds in your account. It is estimated that you will receive \$2.96 on Friday, May 5, 2006, in inmate pay. Based on the deduction schedule listed in 309 IMP 40 this entire amount will be applied to obligations already incurred and posted to your account. There will be no funds available to pay the amounts owed for the two cases previously mentioned.

If the business office receives an order from the court to post to your account any filing fees owed for these two cases it will be done at the time the notice is received.

With one exception, the Court of Appeals for the Seventh Circuit has not determined the priority to be given to a prisoner's obligations under the Prison Litigation Reform Act. The exception relates to initial partial payments. In Newlin v. Helman, 123 F.3d 429, 435 (7th Cir. 1977), rev'd on other grounds by Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000), and Walker v. O'Brien, 216 F.3d 626 (7th Cir. 2000), the court of appeals noted that how much a prisoner owes, and how it will be collected, is determined entirely by 28 U.S.C. § 1915 and is outside the prisoner's (and the prison's) control once the prisoner files a complaint or notice of appeal. The court went on to rule that it was error for the district court to fail to collect an initial partial payment from an inmate who was receiving periodic income, simply because the money was directed elsewhere as quickly as it was earned. In the view of the court, collection of the assessment "should have come off the top of the next deposit of prison wages" Nothing in § 1915(b)(2), the installment collection provision of the statute, contradicts this method of determining priority of payments. Indeed, § 1915(b)(2) states, "*After payment of the initial partial filing fee*, the prisoner shall be required

to make monthly payments of 20 percent of the preceding month's income . . . (emphasis added).” Nothing in the statute appears to authorize prison officials to refuse to make an initial partial payment because a prisoner owes payments on other obligations. Therefore, it may be that prison officials are not on firm footing when they refuse to grant a prisoner's request for payment of an initial partial payment on the ground that the prisoner owes money for other obligations. Because Mr. Devendorf's decision to collect plaintiff's income on May 5, 2006, to pay obligations other than the initial partial payments he owes in this cases may not have been proper, I will ask defendants to show cause why plaintiff's May 5 inmate pay should not be credited to his account and redirected toward the initial partial payment he owes for his appeal in this case. In the meantime, I will grant plaintiff an enlargement of time to June 2, 2006, in which to pay the full amount of the initial partial payment he has been assessed in this case.

ORDER

IT IS ORDERED that defendants show cause no later than May 17, 2006, why plaintiff's May 5, 2006 inmate pay should not be credited to his account and redirected toward the initial partial payment he has been ordered to pay for filing his appeal.

Further, IT IS ORDERED that plaintiff may have an enlargement of time to June 2, 2006, in which to pay the \$5.54 initial partial payment he has been assessed in this case. If, by June 2, 2006, plaintiff fails to make the initial partial payment or show cause for his

failure to do so, I will notify the court of appeals so that it may take appropriate action with respect to his appeal.

Entered this 10th day of May, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge