

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

LARRY WILLIAM FAUST,

Plaintiff,

v.

WISCONSIN DEPARTMENT OF
CORRECTIONS,

Defendant.

ORDER

03-C-531-C

On September 26, 2003, I dismissed this case, which was brought as a civil action pursuant to 42 U.S.C. § 1983. The dismissal was warranted because plaintiff was asking for relief that could be considered only in a petition for a writ of habeas corpus after he exhausted his state court remedies. Now plaintiff has written to request a refund of the \$150 fee he paid for filing this case. He argues that he pursued an action in this court only because, after he made an earlier inquiry, the clerk of court sent him a letter advising him that he would have to file a complaint if he wished relief from this court. He suggests that because this letter encouraged him to file in the wrong court, he is entitled to a refund of his filing fee. Unfortunately, plaintiff is mistaken.

The administrative costs associated with filing a complaint accrue when a plaintiff's complaint is processed and assigned a case number. A plaintiff whose case is dismissed, whether at the outset or at some later stage, is not entitled to a refund of the filing fees.

The letter plaintiff received from the clerk of court is a standard letter sent to any person who writes informally to request court action. The fact is that courts cannot issue orders or take any other kind of action to resolve matters complained about in a letter. It was entirely proper for the clerk to write to plaintiff to tell him that the only way a judge of this court could consider the question raised in his letter would be for plaintiff to raise the question in the context of a formal lawsuit. However, it is not proper for the clerk of court or any other person working in the court to tell potential filers what kind of lawsuit they should be filing or whether they should be filing in some other court. This would be legal advice, which no member of the court is allowed to give.

It is unfortunate that plaintiff was unaware of the distinction between the kinds of cases federal courts can decide and the kinds of cases state courts may decide and that he misunderstood the import of the letter he received from the clerk. Although I am sympathetic to the fact that \$150 is a significant amount of money for most prisoners, there is no law that requires or even allows this court to refund plaintiff's filing fee.

ORDER

IT IS ORDERED that plaintiff's request for a refund of the \$150 fee he paid for filing this case is DENIED.

Entered this 22nd day of October, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge