

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

DENNIS EARL BARNES,

Plaintiff,

v.

WILLIAM J. BLACK and
METROPOLITAN PROPERTY AND
CASUALTY INSURANCE,

Defendants.

ORDER

03-C-703-C

Judgment was entered in this case on May 24, 2004, granting defendants' motion to dismiss and closing this case. Plaintiff filed a timely motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e), which was denied on June 4, 2004. Now plaintiff has filed a notice of appeal. Because the notice is not accompanied by the \$255 fee for filing his appeal, I construe plaintiff's notice to include a request for leave to proceed on appeal in forma pauperis.

Plaintiff's request for leave to proceed in forma pauperis on appeal is governed by the 1996 Prison Litigation Reform Act. This means that this court must determine first whether plaintiff's request must be denied either because he has three strikes against him under 28

U.S.C. § 1915(g) or because the appeal is not taken in good faith. Plaintiff does not have three strikes against him, and I do not intend to certify that his appeal is not taken in good faith.

The only other hurdle to petitioner's proceeding with his appeal in forma pauperis is the requirement that he pay an initial partial payment of the filing fee that has been calculated from a certified copy of his trust fund account statement for the six-month period immediately preceding the filing of his notice of appeal. 28 U.S.C. § 1915(a)(2). Petitioner's trust account statement filed with his complaint in October 2003 covers a time period from June 8, 2003, through December 8, 2003. The information contained in it is too old to satisfy the statutory requirement that the assessment be calculated from a trust fund account statement for the six month period "immediately preceding the filing of the . . . notice of appeal" 28 U.S.C. § 1915(a)(2).

Accordingly, IT IS ORDERED that petitioner may have until July 13, 2004, in which to submit a certified copy of his trust fund account statement for the six-month period beginning approximately January 19, 2004, and ending approximately June 19, 2004. If, by July 13, 2004, petitioner fails to submit the required statement or show cause for his

failure to do so, then I will deny his request for leave to proceed in forma pauperis on the ground that he has failed to show that he is entitled to indigent status on appeal.

Entered this 22nd day of June, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge