

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

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STEPHEN W. JONES,

Petitioner,

v.

GERALD BERGE, et al,

Respondents.

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ORDER

03-C-99-C

Petitioner Stephen W. Jones, a prisoner at the Wisconsin Secure Program Facility in Boscobel, Wisconsin, has filed a proposed complaint and a request for leave to proceed in forma pauperis. The request will be denied, because petitioner does not qualify for in forma pauperis status under 28 U.S.C. § 1915(g).

Section 1915(g) reads as follows:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

On at least three prior occasions, petitioner has been denied leave to proceed in forma

pauperis in the Eastern and Western Districts of Wisconsin in lawsuits deemed to be legally frivolous. See Jones v. Bablitch, 89-C-890-C (W.D. Wis. Nov. 13, 1989; Jones v. McCaughtry, 92-C-502 (W.D. Wis. July 21, 1992; and Jones v. McCaughtry, 96-C-310 (E.D. Wis. Mar. 22, 1996).

Moreover, petitioner's complaint does not appear to allege any credible facts from which an inference may be drawn that he is under imminent danger of serious physical injury. The complaint consists of 77 pages of tightly handwritten single spaced lines of text and hundreds of pages of exhibits. The bulk of the complaint alleges that petitioner has been subjected to a host of unconstitutional acts and conditions, some occurring as long ago as June of 2000. If there is a credible claim from which an inference could be drawn that petitioner is under imminent danger, it is buried in the prolix recitation of alleged harms. I conclude that petitioner's assertions of wrongdoing are inadequate to permit him to proceed under the exception in § 1915(g).

Because petitioner is disqualified from proceeding in forma pauperis under § 1915(g), he may choose one of three courses of action to follow.

First, he may decide that he wishes to pursue this case as a paying litigant. If so, he must submit a check or money order made payable to the clerk of court in the amount of \$150 and advise the court that he is proceeding as a paying litigant. If he does this, however, petitioner should be aware that the court then will be required to screen his

complaint under 28 U.S.C. § 1915A, and dismiss his case if the complaint is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant who is immune from such relief.

Second, petitioner may decide he does not wish to pursue this matter further. If this is the case, then no further review will be given petitioner's complaint. However, petitioner will still owe the \$150 filing fee, and he must pay it immediately. Newlin v. Helman, 123 F.3d 429, 436-437 (7th Cir. 1997). If petitioner fails to pay the fee promptly and has the money to do so, an order will be entered under Support Systems International, Inc. v. Mack, 45 F.3d 185 (7th Cir. 1995), requiring the clerk of court to return unfiled any civil complaints petitioner might submit until petitioner's debt to the judicial system has been paid. Newlin at 437.

Third, petitioner may decide to take an appeal from this order barring him from proceeding in forma pauperis because of his three-strike status. If, within 30 days of the date of this order, petitioner were to file a notice of appeal, I would be required to allow him to take the appeal without prepaying the \$105 filing fee, Newlin at 436. However, petitioner is cautioned that if he takes an appeal and loses, he will then owe two fees, one for filing the complaint and another for filing the appeal, and both fees will have to be paid in full immediately or an order under Mack will be issued and remain in force until the fees are paid.

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis is DENIED because petitioner is not eligible for in forma pauperis status under 28 U.S.C. § 1915(g).

Petitioner has thirty (30) days from the date of this order in which to:

- 1) pay the \$150 fee and request that the court process the complaint;
- 2) pay the \$150 fee and advise the court that he does not intend to pursue the lawsuit; or
- 3) file a notice of appeal.

If, within thirty (30) days of the date of this order, petitioner does none of these things, then an order under Support Systems International, Inc. v. Mack will be entered.

Entered this 4th day of March, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge